SUPREME COURT OF THE UNITED STATES.

No. 333.

ARMSTRONG'S FOUNDRY, JOHN ARMSTRONG, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Libel.—Filed Nov.* 17, 1863.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America, and William W. Lamberton, informant against the buildings, its tools, appliances, and lots of ground on which they stand, known as the Armstrong Foundry, hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That Cuthbert Bullitt, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 24th day of October, in the year one thousand eight hundred and sixty , seized as forfeited to the United States, at New Orleans, within said district and within the jurisdiction of this court, the following described property, to wit: the building lying and being situated on the corner of New Levee and Erato streets, city of New Orleans, with all its tools, shops, and appliances thereunto appertaining, together with the lot or parcel of ground on which said described building stands, said building being known as the Armstrong Foundry. A more particular description of the tools, shops, appliances, and contents of said Armstrong Foundry is herewith filed, marked Exhibit A, and prayed to be made a part of this libel of information; said lot being more particularly described as follows: A certain portion of ground situate in the suburb Delord, in this city, and bounded by Front, Suzette, and New Levee streets, and on a certain alley called Withers alley, 20 feet wide, running parallel with said Suzette street, said portion measuring 86 feet 6 inches front on said Front street, 307 front on said Suzette
2 street, 86 feet 6 inches front on New Levee street, and 307 feet front on said Withers alley, (American measure,) together with the buildings and improvements thereon.

3 II. That by the act of the Congress of the United States, approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employee, shall pur-

chase or acquire, sell or give, any property of whatever kind or description, with intent to employ the same or suffer the same to be used or employed in aiding, abetting, or promoting such rebellion or resistance to the laws or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found, and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation "that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law;" and that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed and had not been suppressed.

IV. 1. That the property herein above described was used and employed knowingly by the owner or owners thereof in aiding, abetting, and promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by manufacturing projectiles of war and furnishing materials of war for the use of the enemies of the United States.

2. That the property herein described was used and employed, knowingly, by the owner or owners thereof in aiding and abetting persons engaged in the said insurrection and resistance to the laws within the meaning of the said act of Congress, after the approval of said act, and after the public proclamations of the President above-mentioned, and after the 16th day of August, 1861.

3. That the said property was purchased, or acquired, or sold, or given, by the owner or owners thereof, or by his, her, or their agent or employee, with intent to use and employ the same for the purpose of aiding, abetting, and promoting the said insurrection and resistance to the laws, after the approval of said act, and after the public proclamations above mentioned, and after the 16th day of August, 1861.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding and abetting and promoting said insurrection and resistance to the laws, or of aiding, abetting, and promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th day of August, 1861, by permitting the manufacturing of war materials for the use of the enemies of the United States.

5. That the owner or owners of said property, his, her, or their agent or employee, did suffer said property to be used or employed in aiding, abetting, or promoting the insurrection proclaimed by the

President as aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection, after the approval of act above-mentioned, and after the proclamation of the President duly made public on the 16th day of August, 1861.

V. That by reason of the premises the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer
4 this libel of information, and that an order of publication may be made in the usual form, and that all due proceedings being had, this honorable court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of the said United States, and of Wm. W. Lamberton; and he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
U. States Attorney for the Eastern District of Louisiana.

5 *Exhibit A.—Filed with libel Nov.* 17, 1863.—*Inventory of the effects of the Armstrong Foundry.*

Office:

1 black walnut standing desk, 1 copy press, 2 iron safes, 6 office chairs, 1 mahogany sitting desk, 1 wall clock, 1 barometer.

State room:

Lot No. 1. Sundries, consisting of sash-weights, bolts, tackle-blocks, shovels, paints, oils, globe lamp, glass, lead pipe, &c.

Coal, lot No. 2. About one thousand barrels coal, represented as the property of Williamson Smith.

Lot No. 3. Consisting of 3 rolling machine; 1 iron shears; 2 steam horizontal engines; 3 forges and tools, sundry patterns; boiler
6 iron, old; 1 iron cistern; 16 drums, cog wheels, pulleys, and barrels of old iron; 2 anvils; 19 bars round iron, short and long; 1 lathe slide; 2 trucks, &c; 1 sugar roller.

Lot No. 4. 1 machine punch; 1 large steam boiler; 1 bellows; 1 rolling mill; 1 lot copper; 1 lot of old iron; 1 large scales; 1 four-wheel truck; 1 lot copper, lead, brass, and composition in iron room; 1 large boiler, horizontal and upright; 1 lot boiler plates; 1 lot car wheels; 1 small rivetting forge and bellows; 1 boiler; 4 anvils; 1 boiler truck; 1 shaft; 2 trucks, wheels, and axles; 1 lot grate bars; 1 lot pig iron; 1 boiler head, sundries of irons, and parts of machinery; 1 lot shells, round.

Lot No. 5. 1 long sliding lathe; 5 bed plates, sundry patterns; 1 lot bolts; 1 lot old iron; 2 round shafts; 1 lot valve pipes; 1 drum; 2 valve pipes, or steam chests; 1 vice; 1 thread-cutter machine; 1 lot iron boxes on bench; 1 lot Troy bars and bolts, round and square; 1 old pumping machine; 1 lot bolts; 1 lot rail switches; 2 sugar

rollers; 1 lot car wheels; 1 large band wheel; 1 large fly
7 wheel; 2 iron frames; sundry irons for coupling head plates, &c.; gas-house retorts, furnace heads; 1 lot old and new grate bars; 4 mill cheeks, furnace doors; 1 lot spherical shell; 1 lot old iron, cast and wrought; 1 pair scales; 1 large and small cog wheels; 1 lot short pipes; sundry irons; 1 sugar-mill frame; 2 cheeks; 1 lot steam valves; 2 iron boxes; 2 bed plates for sugar mills; 5 round shafts; 1 sliding lathe.

Lot No. 6. 2 planing machines for iron; 2 sliding lathes; 3 drilling machines, tools and wrenches to these machines; 1 wheelbarrow; 1 horizontal steam engine; 1 upright furnace for melting iron; 1 blower; 1 boiler and furnace; 1 iron cistern; 1 grindstone; 1 lot pulleys, and shafting throughout; sundry irons, consisting of drill steam-chest and plates, various kinds, 10 pieces finished and unfinished shafting.

Lot No. 7. Work benches, vices, tools, 2 steam-chests, 1 iron pipe elbow, 1 governor, 1 lot strapes, 2 steam valves, 1 lot rail car wheel-boxes, 2 steam pumps, 2 valves, 1 large lot patterns and moulds,
wood and iron; 1 cylinder for making facing sand, 1 lot pig
8 iron, 4 saddles, 1 truck, 4 wheels, 1 hoisting crane, 1 brass furnace, 1 lot gas boxes for pavements, 2 cast iron pressure plates.

Lot No. 8. 2 horizontal steam engines, 1 lot round iron bars, 1 lot ventilators, 1 lot globe glasses for lamps, sundries of machinery, iron, and parts; 1 lot iron footing for tin leaders, sundry plates, about 5 barrels coke, 1 lot round iron shafts.

Up stairs: 3,000 feet white pine lumber, more or less; 1 lot patterns, 1 lot crucibles, 1 turning lathe, sundrys of patterns, 2 carpenter's side benches.

Lot No. 9. Opposite shop on vacant lot: 6 boilers, various kinds; 1 furnace head, 1 large draining wheel, 1 large shears and appliances, 1 large fly wheel, 8 iron columns, 9 lengths T railroad iron, and sundries of iron work, various kinds and sizes.

9 *Order of publication.*

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Whereas certain property described in the libel filed by the district attorney, and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest therein has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern dis-

trict of Louisiana did, on the 17th day of November, A. D. 1863, file a libel of information in this court praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this 18th Novem'r, in the year of our Lord eighteen hundred and sixty, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 7th day of December, 1863, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein should not be condemned and sold according to law, and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said 7th day of December, A. D. 1863, the first publication to be on or before the 21st instant.

New Orleans, Nov. 18, 1863.

(Signed) E. H. DURELL, *Judge.*

11 *Warrant.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the following described property: The building lying and being situated on the corner of New Levee and Erato streets, with all its tools, shops, and appliances thereunto appertaining, together with the lot or parcel of ground on which said building stands, said building being known as the Armstrong Foundry, as more particularly described in the inventory marked Exhibit A, and annexed to the libel of information of the district attorney and now of record in this court, together with all the improvements, rights, privileges, appurtenances, and other hereditaments thereunto belonging, now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or

12 persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant, and how you have executed this warrant that you make return according to law.

rollers; 1 lot car wheels; 1 large band wheel; 1 large fly
7 wheel; 2 iron frames; sundry irons for coupling head plates, &c.; gas-house retorts, furnace heads; 1 lot old and new grate bars; 4 mill cheeks, furnace doors; 1 lot spherical shell; 1 lot old iron, cast and wrought; 1 pair scales; 1 large and small cog wheels; 1 lot short pipes; sundry irons; 1 sugar-mill frame; 2 cheeks; 1 lot steam valves; 2 iron boxes; 2 bed plates for sugar mills; 5 round shafts; 1 sliding lathe.

Lot No. 6. 2 planing machines for iron; 2 sliding lathes; 3 drilling machines, tools and wrenches to these machines; 1 wheelbarrow; 1 horizontal steam engine; 1 upright furnace for melting iron; 1 blower; 1 boiler and furnace; 1 iron cistern; 1 grindstone; 1 lot pulleys, and shafting throughout; sundry irons, consisting of drill steam-chest and plates, various kinds, 10 pieces finished and unfinished shafting.

Lot No. 7. Work benches, vices, tools, 2 steam-chests, 1 iron pipe elbow, 1 governor, 1 lot strapes, 2 steam valves, 1 lot rail car wheel-boxes, 2 steam pumps, 2 valves, 1 large lot patterns and moulds, wood and iron; 1 cylinder for making facing sand, 1 lot pig
8 iron, 4 saddles, 1 truck, 4 wheels, 1 hoisting crane, 1 brass furnace, 1 lot gas boxes for pavements, 2 cast iron pressure plates.

Lot No. 8. 2 horizontal steam engines, 1 lot round iron bars, 1 lot ventilators, 1 lot globe glasses for lamps, sundries of machinery, iron, and parts; 1 lot iron footing for tin leaders, sundry plates, about 5 barrels coke, 1 lot round iron shafts.

Up stairs: 3,000 feet white pine lumber, more or less; 1 lot patterns, 1 lot crucibles, 1 turning lathe, sundrys of patterns, 2 carpenter's side benches.

Lot No. 9. Opposite shop on vacant lot: 6 boilers, various kinds; 1 furnace head, 1 large draining wheel, 1 large shears and appliances, 1 large fly wheel, 8 iron columns, 9 lengths T railroad iron, and sundries of iron work, various kinds and sizes.

9 *Order of publication.*

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

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trict of Louisiana did, on the 17th day of November, A. D. 1863, file a libel of information in this court praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this 18th Novem'r, in the year of our Lord eighteen hundred and sixty, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 7th day of December, 1863, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein should not be condemned and sold according to law, and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said 7th day of December, A. D. 1863, the first publication to be on or before the 21st instant.

New Orleans, Nov. 18, 1863.

(Signed) E. H. DURELL, *Judge.*

11 *Warrant.*

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You are hereby commanded forthwith to seize and into your possession take the following described property: The building lying and being situated on the corner of New Levee and Erato streets, with all its tools, shops, and appliances thereunto appertaining, together with the lot or parcel of ground on which said building stands, said building being known as the Armstrong Foundry, as more particularly described in the inventory marked Exhibit A, and annexed to the libel of information of the district attorney and now of record in this court, together with all the improvements, rights, privileges, appurtenances, and other hereditaments thereunto belonging, now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or

12 persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant, and how you have executed this warrant that you make return according to law.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 18th day of November, A. D. 1863, and 88th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.—Received 19th November, 1863.

13 The previous and legal preliminary of seizure having been perfected under a writ issued from another legal source, I proceeded to perform the additional legal requisites by posting copies of this warrant, libel, and judge's order on the door of the court-house, and publishing monition in the "Era," a daily newspaper printed in New Orleans, on the 20, 24, 28 November, 1st, 5th December, 1863, returnable 7th December, 1863.

(Signed) J. G. A. HOIT,
Dep. U. S. Marshal.

Monition.

In the United States circuit court, sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE ARMSTRONG FOUNDRY, &c. } No. 3386.

In obedience to a warrant issued in this court, to me directed in the above entitled suit, I have seized and taken into my possession the building known as the Armstrong Foundry, lying and being situated at the corner of New Levee and Erato streets, together with the lot or parcel of ground on which said building stands, with all the tools, shops, appliances, etc., thereunto appertaining, as follows, to wit:

1 black walnut standing desk, 1 copy press, 2 iron safes, 6 office chairs, 1 mahogany sitting desk, 1 wall clock, 1 barometer; lot No. 1, sundries, consisting of sash-weights, bolts, tackle blocks, shovels, paints, oils, globe lamp glasses, lead pipe, etc., about 1,000 bbls. coal, 3 rolling machines, 1 iron shears, 2 steam horizontal engines, 3 forges and tools, sundry patterns, boiler iron, 1 iron cistern, 16 drums, cog wheels, pulleys and barrels of old iron, 2 anvils, 19 bars round iron, short and long, 1 lathe slide, 2 trucks, etc., 1 sugar boiler, 1 machine punch, 1 large steam boiler, 1 bellows, 1 rolling mill, 1 lot copper, 1 lot of old iron, 1 large scales, 1 four-wheel truck, 1 lot copper, lead, brass, and composition in iron-room, 1 large boiler, horizontal and upright, 1 lot boiler plates, 1 lot car wheels, 1 small riveting forge and bellows, 1 boiler, 4 anvils, 1 boiler truck, 1 shaft, 2 truck wheels and axles, 1 lot grate bars, 1 lot pig iron, 1 boiler head, sundries of irons and parts of machinery, 1 lot shells, round, 1 long sliding lathe, 5 bed plates, sundry patterns, 1 lot bolts, 1 lot old iron, 2 round shafts, 1 lot valve pipes, 1 drum, 2 valve pipes or steam-chests, 1 vice, 1 thread-cutter machine, 1 lot iron boxes on bench, 1 lot iron bars and bolts, round and square, 1 old pumping machine, 1 lot bolts, 1 lot rail switches, 2 sugar rollers, 1 lot car wheels, 1 large band-wheel, 1 large fly-wheel, 2 iron frames, sundry irons for coupling,

head plates, etc., gas-house retorts, furnace heads, 1 lot old and new grate bars, 4 mill checks, furnace doors, 1 lot spherical shell, 1 lot old iron, cast and wrought, 1 pair scales, 1 large and small cog-wheel, 1 lot short pipes, sundry irons, 1 sugar mill frame, 2 checks, 1 lot steam valves, 2 iron boxes, 2 bed plates for sugar-mills, 5 round shafts, 1 sliding lathe, 2 planing machines for iron, 2 sliding lathes, 3 drilling machines, tools and wrenches to these machines, 1 wheelbarrow, 1 horizontal steam engine, 1 upright furnace for melting iron, 1 blower, 1 boiler and furnace, 1 iron cistern, 1 grindstone, 1 lot pulleys and shafting throughout, sundry irons, consisting of drills, steam-chests and plates, various kinds, 10 pieces finished and unfinished shafting, work-bench, vices, tools, 2 steam-chests, 1 iron pipe elbow, 1 governor, one lot of strapes, two steam valves, one lot of rail car wheel-boxes, 2 steam pumps, 2 valves, 1 large lot patterns and moulds, wood and iron, 1 cylinder for machine facing sand, 1 lot pig iron, 4 saddles, 1 truck, 4 wheels, 1 hoisting crane, 1 brass furnace, 1 lot gas boxes for pavements, 2 cast-iron pressure plates, 2 horizontal steam engines, 1 lot round iron bars, 1 lot ventilators, 1 lot globe glasses for lamps, sundries of machinery, iron, and parts, 1 lot iron footing for tin leaders, sundry plates, about 5 bbls. coke, 1 lot round iron shafts, 3,000 feet white pine lumber, more or less, 1 lot patterns, 1 lot crucibles, 1 turning lathe, sundries of patterns, 2 carpenter side benches. Opposite shop on vacant lot, 6 boilers, various kinds, 1 furnace head, 1 large drawing wheel, 1 large shear and appliances, 1 large fly-wheel, 8 iron columns, 9 lengths T railroad iron, and sundries of iron work, various kinds and sizes; together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest therein, now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit now pending in the circuit court of the United States; and I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said property should not be condemned and forfeited to the United States, and be sold agreeably to the prayer of the libellants.

United States marshal's office, New Orleans, 19th day of Nov., 1863.

JAMES GRAHAM, *U. S. Marshal.*

Intervention of Citizens' Bank of Louisiana.—Filed December 7th, 1863.

United States circuit court.

UNITED STATES
vs.
THE ARMSTRONG FOUNDRY, &c. } No. 3386.

To the honorable the judge of the United States circuit court for the sixth judicial district and eastern district of Louisiana:

In pursuance of the public notice given by James Graham,
14 United States marshal for said United States circuit court, in the case of the United States *vs.* The Armstrong Foundry, &c., it being the building known as the Armstrong Foundry, lying and being situated at the corner of New Levee and Erato streets, together with the lot or parcel of ground on which said building stands, with all the tools, shops, appliances, &c., thereunto appertaining, to the owner or owners, and all persons having or pretending to have any right, title, or interest in or to the same property, to be and appear at the circuit court of the United States for the district aforesaid, to show cause, if any they have or can, why said property should not be condemned and forfeited to the United States, and sold agreeably to the prayer of the libellants, now comes the Citizens' Bank of Louisiana, a corporation created by law and located in the city of New Orleans, whose president and directors are loyal citizens of the United States, who, reserving their rights to all exceptions, if necessary, and intervening for her interest, exhibits this their libel against the property of John Armstrong, herein seized, taken, and now in the possession and custody of the marshal of this court, in virtue of a war-
15 rant issued therefrom in the above-entitled case, said property being the same one above described, in this city of New Orleans, State of Louisiana, and said intervenor alleges and articulately propounds as follows:

That said Citizens' Bank of Louisiana, the intervenor, is creditor of John Armstrong in the sum of seven thousand three hundred and twenty dollars, with interest, as will be hereafter specified, and in a further sum of five thousand four hundred dollars, with interest, as it will be also hereafter explained; that said John Armstrong, being stockholder of the Citizens' Bank of Louisiana for three hundred and five shares of one hundred dollars each of the capital stock of the Citizens' Bank of Louisiana, secured by mortgage on said property herein seized, and on certain batture ground, did, on the 11th of February, 1852, according to an act passed before Ad. Boudousquie, notary, on the same day, subscribe a stock note in favor of said bank for the sum of ten thousand three hundred and seventy dollars for value received, which he promised to pay on the 1st of February 1853, or renew according to the provisions of the charter of said Citi-
zens' Bank; that said note has been curtailed from year to
16 year and is now reduced to seven thousand three hundred and thirty dollars, due on the first of February, 1863, and bears

interest at the rate of ten per cent. per annum till paid, or renewed according to the charter aforesaid; that said John Armstrong having, by an act passed on the 11th of December, 1849, also passed before Boudousquie, notary, purchased from Mrs. J. M. Kennedy, the above three hundred shares of the bank stock of the Citizens' Bank, and the property seized in this case, on which they are secured by mortgage, and Mrs. J. M. Kennedy having also subscribed on the 20th of August, 1849, in favor of said Citizens' Bank a stock note for the sum of eight thousand three hundred and twenty-five dollars for value received, which she promised to pay on the first day of February, 1850, or renew according to the provisions of the charter of said bank, said John Armstrong, in said act of the 11th of December, 1849, assumed the payment of said note, which by the instalments by him paid has been curtailed from year to year, is now reduced to five thousand four hundred dollars, due on the
17 1st of February, 1863, and bears interest at the rate of ten per cent. per annum till paid, according to the charter of said bank. That the amount of said two notes are secured by mortgage on the property above described and seized, and said two stock notes, one for seven thousand three hundred and twenty dollars, and the other for five thousand four hundred dollars, with ten per cent. interest from the first of February, 1863, on each of said notes, are further secured by a pledge of three hundred and five shares now reduced to two hundred and eighty-five shares of stock attached to the property seized in this case. That all the above allegations appear from the said two stock notes, and acts of sale and mortgage, filed now and annexed to this intervention and marked A, B, C, D, E. That by the laws of Louisiana the property of said John Armstrong That by the laws of Louisiana the property of said John Armstrong is the common pledge of all his creditors, and that this intervenor is entitled to be paid the amount of the indebtedness owing to her the Citizens' bank of Louisiana, in preference over other creditors and over the claim of the United States out of the property of said John Armstrong now under seizure aforesaid. That all and singu-
18 lar allegations therein contained are true.

Wherefore the Citizens' Bank of Louisiana, intervenors, pray that this honorable court do pronounce in favor of their demand, and that they be recognized as mortgage creditors of said John Armstrong in the manner and form and for the amount above stated:

1st. The sum of seven thousand three hundred and thirty dollars, with interest at 10 per cent. from the 1st of February, 1863, till paid.

2d. The sum of five thousand four hundred dollars, with interest at ten per cent. from the 1st of February, 1863, till paid, and in case of sale of the property mortgaged to your intervenors, it be ordered, adjudged, and decreed that the three hundred and five shares, now reduced to two hundred and eighty-five shares of the mortgage stock of the Citizens' Bank be sold, together with the property above described and now under seizure in this case, and that the Citizens' Bank of Louisiana are entitled to receive, by privilege and preference to any of the creditors or claimants against the said John Armstrong,

one of the proceeds of said sale—1st. The sum of seven thousand three hundred and twenty dollars, with ten per cent. interest from the 1st of February, 1863, till paid; 2d. The sum of five thousand four hundred dollars, with interest at 10 per cent. from the 1st of February, 1863, till paid, it being the amount respectively due on said two stock notes secured by mortgage on said property now under seizure in this case; and your intervenors pray for costs, on which shall be taxed nine dollars for costs of copies, and for such other relief and redress as to right, justice, and equity may appertain, and as the court is competent to give in the premises.

19

(Signed) L. CASTERA,
Att'y for Intervenors.

J. D. Dinegre, being duly sworn, deposes and says that he is the president of the Citizens' Bank of Louisiana, and that said bank is the bona fide creditor of John Armstrong as set forth in the above petition, and that all the facts and allegations contained in said petition are true and correct, to the best of his knowledge and belief.

(Signed) JAS. D. DENEGRE.

Sworn to and subscribed before me this 7th Dec., 1863.

(Signed) T. B. VINOT, *D'y C'k.*

20

Document A.—Filed December 7, 1863.

In the city of New Orleans, in the State of Louisiana, this twentieth day of August, eighteen hundred and forty-nine, and in the seventy-fourth year of the independence of the United States of America, before me, Charles Boudousquie, notary public, duly commissioned and sworn in and for the city and the parish of Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Sarah Ann Withers, wife of Mr. Joseph Meison Kennedy, and by him, here present, duly assisted and authorized, both residing in this city; and M. Valerien Allain, residing in this city, president of the managers of the Citizens' Bank of Louisiana, herein acting by virtue of resolutions adopted by the said managers in their sittings of the 5th day of June, 1849, and of the 17th day of July, 1849, and of the 4th day of August, 1849, whereof three certified copies are hereunto annexed, which said appearers declared that by an act executed before the undersigned notary on the 29th day of July, 1841, the said Mrs. Kennedy, to secure unto the Citizens' Bank of Louisiana the sum of sixty-two thousand dollars, amount of six hundred and twenty shares of the capital stock of said bank, the payment of all loans thereon, and also the payment of all eventual interest on said loans, at the rate of ten per centum per annum, has mortgaged in favorof said bank the following described property, to wit:

21

1st. A certain lot of ground situate in the suburb Delord in this city, and bounded by Front, Suzette and New Levee streets, and a

certain alley called Withers alley, twenty feet wide, running parallel with said Suzette street, said portion measuring eighty-six feet six inches front on said Front street, three hundred and seven feet front on said Suzette street, eighty-six feet six inches front on New Levee street, and three hundred and seven feet front on said Withers alley, (American measure,) together with the buildings and improvements thereon.

2d. And all the rights to all excess of ground or batture that
22 may be found in front of the portion of ground above described.

That by another act executed before the undersigned notary on the 3d day of September, 1841, the said Mrs. Kennedy, to secure unto the Citizens' Bank of Louisiana up to the sum of twenty thousand dollars the loans to be made to her on her notes drawn jointly and in solido by her and her said husband, has mortgaged in favor of said bank the property herein above described.

That a portion of ground of the above described property, to wit, the portion fronting on Front street, has been divided into four lots of ground, measuring together eighty-five feet eleven inches front by eighty feet deep, three of which lots were seized and purchased by the Citizens' Bank, with two hundred and twenty-five shares standing thereon, and the other one, with a certain portion of ground adjoining the same in the rear, having twenty feet wide, running from Suzette to Withers alley, was sold by Mrs. Kennedy to Mr. Joseph Sobrano, with ninety shares standing thereon; from which statement of facts it follows that the said Mrs. Kennedy remains the owner of three hundred and five shares in the capital stock of the
23 Citizens' Bank of Louisiana, and also of the following property which secures the said shares, to wit:

1st. A portion of ground situated in the suburb Delord aforesaid, measuring eighty-five feet eleven inches front on New Levee street, between Suzette street and Withers alley, by two hundred and seven feet in depth, between parallel lines, together with the buildings thereon.

2d. And all the rights to all excess of ground or batture in front of the four lots of ground above described.

That the said Mrs. Joseph Meison Kennedy is actually indebted unto the Citizens' Bank of Louisiana in the sum of twenty-one thousand four hundred and seventy-eight dollars and seventy-three cents arising from the following debts, to wit:

1st. The sum of eleven thousand two hundred and eighty-five dollars, being the balance of the loans due on the said three hundred and five shares, which are secured, together with said loans, by the mortgage first above described.

2d. The sum of eight thousand three hundred and twenty-five dollars, being the balance of the loans obtained on her promissory notes secured by the mortgage secondly above related.

24 3d. The sum of six hundred and sixty-eight dollars and seventy-three cents, being for the following items, to wit: the sum of six hundred and thirty-seven dollars and 8 cents for the arreared

instalments and interest due on the two sums above related, and the sum of thirty-one dollars and sixty-five cents for the costs of court and others.

4th. And the sum of twelve hundred dollars paid by the Citizens' Bank of Louisiana, and being for the taxes and paving due by Mrs. Kennedy on the property above described.

That the said Mrs. Kennedy has proposed to the Citizens' Bank of Louisiana to furnish her separate obligations for the four sums above related, and to secure the same, together with the said three hundred and five shares of said bank, by maintaining unimpaired the two mortgages above related, for the sums first and secondly above described, and by mortgaging the remaining property, for the two sums thirdly and fourthly above described. Which proposition was accepted by the Citizens' Bank of Louisiana on the express condition that the two judgments rendered in favor of the said bank against
the said Mrs. Kennedy by the honorabte the district court for
25 the first judicial district of this State, one for the sum of
twenty-seven thousand nine hundred dollars, with interest and costs, and the other one, for the sum of twenty thousand dollars, with interest and costs, shall remain in full force and virtue, and that, in case of non-payment or difficulty whatever, the bank shall have the right to revert to the same and have them duly executed, and also on the further condition, that the said Mrs. Kennedy shall pledge and pawn in favor of said bank the said three hundred and five shares.

Now, therefore, in consideration of the premises, the said Mrs. Joseph M. Kennedy has furnished the following obligations, to wit:

1st. A stock-note dated this day, drawn by her, made in favor of the Citizens' Bank of Louisiana, of the sum of eleven thousand two hundred and eighty-five dollars, payable at the domicil of the said bank on the first day of February, 1850, or renewable from year to year agreeably to the provisions of the charter of said bank, and to the laws thereto relative, and subject to eventual interest not exceeding ten per centum per annum, in case of non payment at maturity.
Which stock-note, after having been paraphed ne varietur by
26 me, the undersigned notary, in order to identify it with this
act and the act of mortgage for security of shares passed before me on the 29th July, 1841, was delivered to the said V. Allain in the capacity, who acknowledges the receipt thereof.

2d. A promissory note dated this day, drawn by her, made in favor of the Citizens' Bank of Louisiana, of the sum of eight thousand three hundred and twenty-five dollars, payable at the domicil of said bank on the first day of February, 1850, or renewable from year to year, on paying at each renewal a curtailment of two hundred and twenty-five dollars on the principal, and the interest on the balance at the rate of six and a half per centum per annum, said note bearing interest, in case of non-payment at maturity, at a rate not exceeding ten per centum per annum, until final payment. Which note, after having been paraphed ne varietur by me, the undersigned notary, in order to identify it with this act and with the act above related passed be-

fore me on the 3d September, 1841, was delivered to the said V. Allain, in his capacity, who acknowledges the receipt thereof.

3d. Two promissory notes dated the first day of July, 1849,
27 drawn by her, made to the order of the cashier of the Citizens' Bank of Louisiana, of the sum of three hundred and thirty-four dollars and thirty-six¼ cents, payable at the domicil of the Citizens' Bank of Louisiana six and twelve months after date, and bearing interest from date until final payment at the rate of eight per centum per annum.

4th. And three promissory notes dated the first day of July, 1849, drawn by her, made to the order of William E. Kennedy and by him indorsed, of the sum of four hundred dollars each, payable at the domicil of the Citizens' Bank of Louisiana one, two, and three years after date, and bearing interest from date until final payment at the rate of eight per centum per annum.

The notes above furnished, described under the third and fourth paragraph, after having been paraphed ne varietur by me, the undersigned notary, in order to identify them with this act, were delivered to the said V. Allain, in his capacity, who acknowledges the receipt thereof.

And in order to secure unto the Citizens' Bank of Louisiana the payment in capital and interest of the stock-note and promissory note first and secondly above described, it is hereby agreed between
28 the parties that the acts of mortgage with one of which each of said obligations is identified, shall remain in full force and virtue, with the special understanding that these presents shall not operate a novation derogatory to the rights and privileges of said bank, accruing from the acts above related.

And in order to secure unto the Citizens' Bank of Louisiana the payment in capital and interest of the notes thirdly and fourthly above described, the said Mrs. Joseph M. Kennedy does hereby mortgage and hypothecate specially and by privilege in favor of said bank the property above described remaining unsold, which she promises neither to alienate nor to incumber to the prejudice of this act, consenting moreover that these presents, together with said notes, be tantamount to a confession of judgment, and that all holder of said notes be entitled to a confession of judgment. It is hereby agreed between the parties that the present act, shall never constitute a novation to the rights and privileges of the Citizens' Bank resulting from the two judgments above related rendered against the said Mrs. Kennedy, and that in case of non-payment or difficulty whatever,
29 the bank shall have the right to revert to said judgments, and to have the same executed agreeably to law, or to proceed by seizure and sale under the present act.

And in order to secure furthermore unto the Citizens' Bank of Louisiana the payment in capital and interest of the obligation furnished by this act, the said Mrs. Joseph M. Kennedy does hereby pledge and pawn, in favor of said bank, the above-mentioned three hundred and five shares.

According to a certificate of the recorder of mortages in and for this

city and parish of New Orleans, under date of 6th August, 1849, and hereunto annexed for reference, it appears that there are no other mortgages standing in the name of Mrs. J. M. Kennedy and recorded against the said property than the following ones, to wit:

1st. The mortgages above related, in favor of the Citizens' Bank of Louisiana, one for security of three hundred and ninety-five shares, and the other one for security of twenty thousand dollars, as per three acts passed before the undersigned notary, one on the 29th July, 1841, one on the 3d September, 1841, and the other one on
30 the 30th October, 1845.

2d. The privilege resulting in favor of George G. Holdship, builder, by act passed under private signature under date of the 27th October, 1841, for the sum of six thousand six hundred dollars, to the rights of which privilege the said Holdship, by act passed before C. V. Foulon, notary, on the 30th July, 1845, has subrogated John W. Walsh up to the sum of $1,089.95.

3d. And the privilege in favor of the municipality No. two for the sum of five hundred and nine dollars and 62 cents for paving in front of Suzette street, which privilege has been duly paid by the Citizens' Bank of Lousiana.

Thus done and passed at New Orleans in my office, on the day, month, and year first above written, in presence of Messrs. Adolphe Boudousquie and Henry St. Paul, competent witnesses, who have hereunto subscribed their names with the said parties and me, notary, after due reading thereof.

(Signed) S. A. KENNEDY.
(Signed) V. ALLAIN.
(Signed) J. M. KENNEDY.
(Signed) CHAS. BOUDOUSQUIE,
Not. Public.

(Signed) A'E BOUDOUSQUIE.
(Signed) HENRY ST. PAUL.

31 I certify the foregoing to be a true copy of the original act on record in my office.

New Orleans, August 24th, 1849.

(Signed) CH'S BOUDOUSQUIE,
Notary Public.

Document B.—Filed December 7, 1863.

In the city of New Orleans, in the State of Louisiana, the eleventh day of December, eighteen hnndred and forty-nine, and in the seventy-fourth year of the independence of the United States of America, before me, Charles Boudousquie, notary public, duly commissioned and sworn in and for this city and the parish of Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Sarah Ann Withers, wife of Mr. Joseph Meisson Kennedy, and by him, here present, duly assisted and authorized, both residing in this city, who de-
32 clared that she does. by these presents, sell, assign, transfer, convey, and set over under all lawful guarantees unto Mr. John

Armstrong, a resident of this city, here present accepting and purchasing for himself, his heirs, and assigns, the following described property and stock, to wit:

First. A certain portion of ground situate in the suburb Delord of this city, in the square bounded by Front, Suzette, and New Levee streets, and a certain alley called Withers alley, twenty feet wide, running parallel with said Suzette street, said portion of ground measuring eighty-five feet eleven inches front on New Levee street, by two hundred and seven feet in depth and front on Suzette street, together with the buildings and improvements thereon. Which said property belongs to the said Mrs. Joseph M. Kennedy by means of the donation inter viros made to her by William Carr Withers, her brother, of a larger portion of ground, whereof the lot of ground above described forms part, according to an act passed before Greenbury Ridgely Stringer,
33 notary in this city, on the fourteenth day of June, eighteen hundred and twenty-eight.

Second. And three hundred and five shares, of one hundred dollars each, in the capital stock of the Citizens' Bank of Louisiana secured by mortgage on said property.

According to a certificate of the recorder of mortgages in and for this city and the parish of Orleans, under date of the 11th December, 1849, and hereunto annexed for reference, it appears that there are no other mortgages standing in the name of the said Mrs. Kennedy than the following ones, to wit:

1o. The mortgage granted by her, per act passed before the undersigned notary on the 29th day of July, 1841, in favor of the Citizens' Bank of Louisiana, to secure the sum of sixty-two thousand dollars, amount of six hundred and twenty shares of said bank, now reduced to three hundred and five shares, the payment of the loans due on said shares now amounting to the sum of eleven thousand two hundred and eighty-five dollars, and also the payment of eventual interest at a rate not exceeding ten per centum per annum in case of non-payment at maturity.

34 2o. The mortgage granted by her, per act passed before the undersigned notary on 3d day of September, 1841, in favor of the Citizens' Bank of Louisiana, to secure the payment of the sum of twenty thousand dollars, now reduced to the sum of eight thousand three hundred and twenty-five dollars, and also the payment of eventual interest on said sum at the rate of ten per centum per annum in case of non-payment at maturity.

3o. The mortgage granted by her, per act passed before the undersigned notary on the 20th August, 1849, in favor of the Citizens' Bank of Louisiana, to secure the payment of the sum of eighteen hundred and sixty-eight dollars and seventy-three cents, and also the payment of the interest as per said act. And by the same act, the said Mrs. J. M. Kennedy, in settlement and liquidation of the sums due to the Citizens' Bank, and secured by the two mortgages firstly and secondly above described, has furnished the two following obligations, to wit, 1st. A stock-note of the sum of eleven thousand two hundred and eighty-five dollars, payable on the first day of Febru-

ary, 1850, or renewable according to the charter of the Citizens' Bank; 2d. And a promissory note of the sum of eight thou-
35 sand three hundred and seventy-five dollars, payable on the 1st February, 1850, or renewable from year to year in the manner hereinafter stipulated.

4o. And the privilege in favor of George H. Holdship, builder, resulting from an act under private signature, deposited in the office of W. T. Lewis, notary, on the 4th January, 1842, by which J. M. Kennedy, for certain buildings therein specified, has bound himself to pay the sum of six thousand six hundred dollars, for the price thereof; and by act passed before J. Cuvellier, notary, on the 8th February 1845, the said Mrs. J. M. Kennedy has furnished eight notes therein fully described, in liquidation of the sum of two thousand two hundred and sixty dollars and forty-five cents, being then the only amount due on the price of said buildings; and by another act passed before C. V. Foulon, notary, on the 30th July, 1845, the said George G. Holdship has subrogated John W. Walsh up to the sum of one thousand eighty-nine dollars and 95 cents, amount of a note drawn by J. M. Kennedy.

The said vendor declared that the privilege above related is almost paid, and that she will keep the purchaser harmless
36 against the effects of the same.

The present sale is made and accepted for and in consideration of the price and sum of twenty-three thousand four hundred and twenty dollars and seventy-three cents, in deduction whereof the said purchaser does hereby bind himself to pay to the discharge of the said vendor, to the Citizens' Bank of Louisiana, the following obligations, amounting together to the sum of twenty-one thousand four hundred and seventy-eight dollars and seventy-three cents, to wit:

1o. A stock-note, dated the 20th August, 1849, drawn by the said vendor, made in favor of the Citizens' Bank of Louisiana, of the sum of eleven thousand two hundred and eighty-five dollars, payable at the domicil of said bank on the first day of February, 1850, or renewable from year to year agreeably to the provisions of the charter of said bank, and to the laws thereto relative, and subject to eventual interest not exceeding ten per centum per annum, in case of non-payment at maturity. Which stock-note is identified with two acts passed before the undersigned notary, one on the 29th July, 1841, and the other one on the 20th day of August, 1849.

2o. A promissory note, dated the 20th August, 1849, drawn
37 by the vendor, made in favor of the Citizens' Bank of Louisiana, of the sum of eight thousand three hundred and twenty-five dollars, payable at the domicil of said bank on the first day of February, 1850, or renewable from year to year on paying at each renewal a curtailment of two hundred and twenty-five dollars on the principal, and the interest on the balance at the rate of six and a half per centum per annum; said note bearing interest, in case of non-payment at maturity, at a rate not exceeding ten per centum per annum until final payment; which note is identified by the under-

signed notary with two acts passed before him, one on the 3d September, 1841, and the other one on the 20th August, 1849.

3o. Two promissory notes, deted the first day of July, 1849, drawn by the vendors, made to the order of the cashier of the Citizens' Bank of Louisiana, of the sum of three hundred and thirty-four dollars and 36 cents, each payable at the domicil of the Citizens' Bank of Louisiana, six and twelve months after date, and bearing interest from date until final payment at the rate of eight per centum per annum. Which notes are identified with an act passed before the undersigned notary on the 20th August, 1849.

38 4o. And three promissory notes, dated the first day of July, 1849, drawn by the vendor, made to the order of William E. Kennedy, and by him indorsed, of the sum of four hundred dollars each, payable at the domicil of the Citizens' Bank of Louisiana, one, two, and three years after date, and bearing interest from date until final payment, at the rate of eight per centum per annum; which notes are identified with the act aforesaid, passed before the undersigned notary on the 20th August, 1849, and for the balance of the price of said property, amounting to the sum of nineteen hundred and forty-two dollars, the said purchaser has furnished, under date of this day, two promissory notes drawn by him, made to his own order, and by him indorsed, of the sum of nineteen hundred and seventy-one dollars, payable six and twelve months after date, and bearing interest at the rate of eight per centum per annum, from date until final payment; which notes, after having been paraphed ne varietur by me, the undersigned notory, in order to identify them with this act, were delivered to the said vendor, who acknowledges the receipt thereof. And in order to secure the full and

39 punctual payment of the two notes herein furnished, and also the payment of the interest above stipulated, a special mortgage is hereby retained on said property in favor said vendor or any holders of said note.

And in order to secure into the Citizens' Bank of Louisiana the sum of thirty thousand five hundred dollars, amount of the said three hundred and five shares of said bank, and the payment in capital and interest of the sum of eleven thousand two hundred and eighty-five dollars, amount of the stock note herein furnished, the said purchaser does hereby take the reversion of the mortgage and pledge of stock herein justly above related, hereby binding himself to comply with all and singular the clauses and conditions contained in said act of mortgage, and particularly with the clause requiring that said property should always be insured against fire.

And also, in order to secure unto the same bank the payment of the sum of eight thousand three hundred and twenty-five dollars, amount of the promissory note herein secondly described, and also the payment of the eventual interest above stipulated, the said purchaser does hereby assume the mortgage herein secondly

40 above related, consented by the said Mrs. Kennedy, per act passed in this office on the 3d day of September, 1841.

And also, in order to secure unto the same bank the payment of

the sum of eighteen hundred and sixty-eight dollars and seventy-three cents, amount of the five promissory notes herein above thirdly and fourthly related, and also the payment of the interest stipulated thereon, the said purchaser does hereby assume the mortgage herein above thirdly related, consented by Mrs. Kennedy, by act passed in this office on the 20th day of August, 1849.

To have and to hold said property and stock unto the said purchaser, his heirs and assigns, to their proper use and behoof forever, the said vendor hereby subrogating the said purchaser to all the rights and actions of property and warranty which she has or may have in and to the above described property and stock, whereof the possession is hereby acknowledged by the said purchaser.

And to these presents personally came and appeared Mr. William E. Kennedy, a resident of this city, who declared that he has taken cognizance of the privilege herein above related, in favor of
41 George S. Holdship, builder, and that he does hereby bind himself, jointly and in solido, with Mrs. Sarah Ann Kennedy, to keep the said John Armstrong harmless against the effects of said privilege.

The vendor declared that the taxes for the year 1848 are duly paid, as it appears from the receipts of the State tax annexed to this act, and of the municipal taxes annexed to an act of sale of J. Sobrano passed in this office on the 20th August, 1849.

Thus done and passed at New Orleans, in my office, on the day, month, and year first above mentioned, in presence of Messrs. Adolphe Blache and Adolphe Boudousquie, competent witnesses, who have hereunto subscribed their names, with the said parties and me, notary, after due reading thereof.

(Signed) W. E. KENNEDY.
(Signed) J. M. KENNEDY.
(Signed) S. A. KENNEDY.
(Signed) JOHN ARMSTRONG.
(Signed) CH'S BOUDOUSQUIE, *Not. Pub.*
(Signed) A. BOUDOUSQUIE.
(Signed) A. BLACHE.

A true copy of the original on file in my office.
New Orleans, December 7th, 1863.
(Signed) A. BOUDOUSQUIE, *Not. Pub.* [SEAL.]
[5-ct. int. rev. st., cancelled]

42 *Document C.—Filed Dec.* 7, 1863.

In the city of New Orleans, in the State of Louisiana, this eleventh day of February, eighteen hundred and fifty-two, and in the seventy-sixth year of the independence of the United States of America, before me, Adolphe Boudousquie, a notary public duly commissioned and sworn in and for this city and the parish of Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. John Armstrong, a resident of this city, and Mr. Varelien Allain, a resident of this city,

president of the managers of the Citizens' Bank of Louisiana, herein acting by virtue of a resolution adopted by the said managers in their sitting of the 18th day of December, 1849, whereof a true copy is hereunto annexed for reference, which said appearers declared that by an act passed before Charles Boudousquie, notary public, on the eleventh day of December, 1849, the said John Armstrong has
43 purchased from Mrs. Sarah Ann Withers, wife of Joseph M. Kennedy, the following described property and bank stock, to wit:

First. A certain portion of ground situated in the suburb Delord of this city, in the square bounded by Front, Suzette, and New Levee streets, and a certain alley called Withers alley, twenty feet wide, running parallel with said Suzette street; said portion of ground measuring eighty-five feet eleven inches front on New Levee street, by one hundred and seven feet in depth and front on Suzette street, together with the buildings and improvements thereon.

Second. And three hundred and five shares, of one hundred dollars each, in the capital stock of the Citizens' Bank of Louisiana, secured by mortgage on said property, and on certain batture ground belonging to Mrs. Sarah M. Kennedy, and fully described in the act of mortgage in favor of the bank. That in part payment of said purchase, the said John Armstrong has bound himself to pay in lieu and place of Mrs. F. M. Kennedy, to the Citizens' Bank of Louisiana, certain obligations, among which is a stock note drawn by the said Mrs. F. M. Kennedy for the sum of eleven thousand two hundred and eighty-five dollars, representing the loans then due on said three
44 hundred and five shares. That for security of the said three hundred and five shares, as well as for security of the loans due thereon, the said John Armstrong, by his act of purchase aforesaid, has assumed the mortgage and pledge of stock consented by the said Mrs. Joseph M. Kenneny, per act before Charles Boudousquie, notary, on the 29th day of July, 1841, in favor of the Citizens' Bank of Louisiana, on a larger portion of ground, for security of six hundred and twenty shares, the payment of all loans thereon, as well as the payment of all eventual interest at the rate of ten per centum per annum, which mortgage was reduced to the said three hundred and five shares allotted on said property, and on the batture ground above mentioned.

Now whereas the said John Armstrong has applied to the Citizens' Bank for the transfer in his name of the said shares, offering to furnish a stock-note drawn by him in the place of the one drawn by the said Mrs. Kennedy, to represent the loans due on the said three hundred and five shares.

And whereas the said application was granted to the said
45 J. Armstrong, on condition that Mrs. Kennedy shall maintain in full force and effect the mortgage above related standing on said batture ground, notwithstanding the said transfer of stock. In conseqence, in consideration of the premises, the said John Armstrong has furnished, under date of this day, a stock-note drawn by him, made in favor of the Citizens' Bank of Louisiana, of the sum of

ten thousand three hundred and seventy dollars, payable at the domicil of said bank on the first day of February, 1853, or renewable from year to year agreeably to the provisions of the charter of said bank, and to the laws thereto relative, and bearing eventual interest at a rate not exceeding ten per centum per annum in case of non-payment at maturity, which note, after having been paraphed ne varietur by me, notary, in order to identify it with this act and with the acts mentioned in the body hereof, was delivered to the said V. Allain, in his capacity, who acknowledges the receipt thereof.

And to these presents personally came and appeared Mrs. Sarah Ann Withers, wife of Joseph M. Kennedy, and by him, here present, duly assisted and authorized, both of this city, which said ap-
46 pearer declared that, notwithstanding the transfer of the said three hundred and five shares, made in the name of the said John Armstrong, and the acceptance by the bank of the stock-note of the latter, in lieu of the stock-note drawn by her formerly held by the bank, she does hereby maintain in full force and virtue the mortgage herein above related upon all the excess of ground or batture now existing, or which may hereafter exist, in front of the property belonging to her in Front Levee street, and originally mortgaged to said bank to secure the said shares, as well as the payment of the said stock-note, hereby conferring unto the Citizens' Bank, in case the property and stock belonging to the said Armstrong, by virtue of the transfer thereof from her should not be sufficient to satisfy the claims of the bank arising from the obligations originally contracted by her, and assumed by John Armstrong, for any deficiency whatever on the part of said Armstrong, on his stock transferred by her as aforesaid, and on the stock loan originally made to her and assumed by John Armstrong, or for the non-fulfilment of any of the obligations by him assumed as stockholder, growing out of the aforesaid
47 transfer, to seize and sell the batture in front of the property originally mortgaged by her to satisfy the bank's claim, of whatever nature it may be, arising from said original obligation, so far as the same shall not have been satisfied by the proceeds of Armstrong's property and stock herein mentioned and above referred to, waiving, furthermore, all right of discussion of Armstrong's other property, than the one now mortgaged by him and originally mortgaged by her; and for the purposes of this additional security, the said Mrs. Kennedy considering herself bound towards the bank in the same manner as if she were still the owner of said property.

Thus done and passed at New Orleans, in my office, on the day, month, and year aforesaid, in presence of Messrs. Gustave Blache, Henry Bezon, competent witnesses, who have signed these presents, with the said parties and me notary, after due reading thereof.

(Signed) T. J. M. KENNEDY.
(Signed) V. ALLAIN.
(Signed) S. A. KENNEDY.
(Signed) JOHN ARMSTRONG.
(Signed) AD. BOUDOUSQUIE, *Not. Pub.*
(Signed) G. BLACHE.
(Signed) HENRY BEZON.

A true copy of the original. New Orleans, February 11th, 1852.
(Signed) AD. BOUDOUSQUIE, *Not. Pub.* [SEAL.]

48 *Document D.—Filed Dec.* 7, 1863.

15,250 orig'l—4,880, 16 instalments.

$10,370.—Be it known that I am well and truly indebted unto the Citizens' Bank of Louisiana, for value received, in the sum of ten thousand three hundred and seventy dollars, being the amount of my credit as a stockholder of three hundred and five shares of said institution, which sum I will pay at the banking-house of New Orleans on the first day of February, 1853, fixed or renew, according to the provisions of the charter of said bank.

The payment of the aforesaid sum of money is secured by a deed of mortgage and pledge passed by Mrs. J. M. Kennedy, before Ch's Boudousquie, then notary public in and for this city and parish of Orleans, under date of the 29th July, 1841, and assumed by me on the 11th day of December, 1849.

New Orleans, 11th February, 1852.
(Signed) JOHN ARMSTRONG.

Citizens' Bank of Louisiana.—Ne varietur: in order to identify this bond with the act mentioned in the body thereof, and also with an act passed before me on this day.

New Orleans, 11th February, 1852.
(Signed) AD. BOUDOUSQUIE, *Not. Pub.*

49 NEW ORLEANS, 5 *July*, 1853.

Received three hundred and five dollars, being seventeenth instalment on the above loan.
(Signed) EUGENE ROUSSEAU, *Cashier.*

NEW ORLEANS, 1 *February*, 1854.

Received three hundred and five dollars, being eighteenth instalment on the above loan.
(Signed) EUGENE ROUSSEAU, *Cashier.*

NEW ORLEANS, 1 *February*, 1855.

Received three hundred and five dollars, being nineteenth instalment on the above loan.
(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, 1 *February*, 1856.

Received three hundred and five dollars, being twentieth instalment on the above loan.
(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, 31 *January*, 1857.

Received three hundred and five dollars, being twenty-first instalment on the above loan.
(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, *February* 1, 1858.

Received three hundred and five dollars, being twenty-second instalment on the above loan.

(Signed) J. DEJAN, *Comptr.*

50 NEW ORLEANS, *February* 1*st*, 1859.

Received three hundred and five dollars, being twenty-third instalment on the above loan.

(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, *February* 1*st*, 1860.

Received three hundred and five dollars, being twenty-fourth instalment on the above loan.

(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, *February* 1*st*, 1861.

Received three hundred and five dollars, being twenty-fifth instalment on the above loan.

(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, *February* 1, 1862.

Received three hundred and five dollars, being twenty-sixth instalment on the above loan.

(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, 2*d February*, 1864.

Received three hundred and five dollars, being twenty-seventh instalment of the above loan.

(Signed) J. DEJAN, *Comptr.*

51 *Document E.—Filed December 7th*, 1863.

$8,325. NEW ORLEANS, 20*th August*, 1849.

For value received, on the first day of February, 1850, I promise to pay to the order of the cashier of the Citizens' Bank of Louisiana, at the domicil of said bank, the sum of eight thousand three hundred and twenty-five dollars, or to renew the same from year to year agreeably to the laws governing stock loans, on paying at each renewal a curtailment of two hundred and twenty-five dollars on the principal, and the interest on the balance in advance at the rate of six and a half per centum per annum.

(Signed) S. A. KENNEDY.

Authorized by—

JOS. M. KENNEDY.

Ne varietur: In order to identify this note with two acts passed before me, one on the 3d September, 1841, and the other on the 20th August, 1849.

(Signed) CH'S BOUDOUSQUIE, *Not. Pub.*

Rec'd 4 February, 1850, two hundred and twenty-five dollars.
New Orleans, 4 February, 1850.
(Signed) J. DEJAN, *Teller.*

Received on ac., 17th May, 1851, two hundred and twenty-five dollars.
New Orleans, 17th May, 1851.
(Signed) J. DEJAN, *Teller.*

52 Rec'd on ac., 12 Febr'y, 1852, two hundred and twenty-five dollars.
(Signed) J. DEJAN, *Teller.*

N. ORLEANS, 5 *March*, 1853.
Rec'd on ac., two hundred and twenty-five dollars, and interest in advance.
(Signed) J. DEJAN, *Teller.*

N. ORLEANS, 1 *Feb'y*, 1854.
Rec'd on ac., two hundred and twenty-five dollars, and interest in advance.
(Signed) J. DEJAN, *Comptr.*

N. ORLEANS, 1 *Feb'y*, 1855.
Rec'd on ac., two hundred and twenty-five dollars, and interest in advance.
(Signed) J. DEJAN, *Comptr.*

NEW ORLEANS, 4 *Febr'y*, 1856.
Rec'd on ac., two hundred and twenty-five dollars, and interest in advance.
(Signed) J. DEJAN, *Comptr.*

Received on acc't of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 4 February, 1857.
(Signed) J. DEJAN, *Comptr.*

53 Received on ac. of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 4 February, 1858.
(Signed) J. DEJAN, *Comptr.*

Received on ac. of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 4 February, 1859.
(Signed) J. DEJAN, *Comptr.*

Received on ac. of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 4 February, 1860.
(Signed) J. DEJAN, *Comptr.*

Received on ac. of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 4 February, 1861.
(Signed) J. DEJAN, *Comptr.*

Received on ac. of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 4 February, 1862.
(Signed) J. DEJAN, *Comptr.*

54 Received on ac. of the within note, two hundred and twenty-five dollars, and interest in advance.
New Orleans, 2 February, 1864.
(Signed) J. DEJAN, *Comptr.*

Mrs. J. M. Kennedy, ass'd by J. Armstrong:

8,325, due 1 February, 1850.
225, on account.

8,100, due 1 February, 1851.
225, on account.

7,875, due 1 February, 1852.
225, on account.

7,650, due 1 February, 1853.
225, on account.

7,425, due 1 February, 1854.
225, on account.

7,200, due 1 February, 1855.
225, on account.

6,975, due 1 February, 1856.
225, on account.

6,750, due 1 February, 1857.
225, on account.

6,525, due 1 February, 1858.
225, on account.

6,300, due 1 February, 1859.
225, on account.

6,075, due 1 February, 1860.
225, on account.

5,850, due 1 February, 1861.
225, on account.

5,625, due 1 February, 1862.
225, on account.

5,400, due 1 February, 1863.
225, on account.

5,175, due 1 January, 1864.

6½ int. in advance.

55 *Claim of John Armstrong.—Filed December* 8, 1863.

U. S. circuit court.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

And now comes before said court John Armstrong, of the city of New Orleans, a loyal citizen of the United States, and claims that he is the true and bona fide owner of all the articles and property herein seized; that no other person is owner thereof.

Wherefore he prays that all the said articles and property may be released and restored to him.

(Signed) MICHAEL HAHN,
Attorney for John Armstrong.

(Signed) R. OLIVER, *Agent.*

Sworn to and subscribed before me, this 8th day of December, 1863, by Robert Oliver, agent for John Armstrong, who declares all the allegations hereinbefore contained to be true.

(Signed) F. B. VINOT, *D'y C'k.*

Exception.—Filed Dec. 8, 1865.

U. S. circuit court.

56 UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

And now comes before said court John Armstrong, of the city of New Orleans, a loyal citizen of the United States, and respectfully shows that this court is without jurisdiction over the matters and things articulated and set forth in the libel of information filed herein; wherefore this appearer, excepting to the jurisdiction of this court,

prays that the libel of information filed in this cause may be dismissed for want of jurisdiction in the court; that the property and articles libelled and seized herein may be restored to him; that he recover costs by him sustained, and have such other and further order and decree as may be suited to law and the nature of the case.

(Signed) MICHAEL HAHN, *of Counsel.*
(Signed) R. OLIVER, *Agent.*

R. Oliver, agent for John Armstrong, being duly sworn, deposes to the truth of the foregoing.

New Orleans, December 8, 1863.

(Signed) F. B. VINOT, *D'y C'k.*

57 *Bond for costs.—Filed December 8th*, 1863.

United States circuit court, sixth circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Know all men by these presents that we, Robert Oliver, as agent of John Armstrong, and as principal, and Patrick Irwin, as surety, are held and firmly bound unto the United States of America, the libellant in the above-entitled suit, in the sum of two hundred and fifty dollars ($250) lawful money of the United States of America, for the payment whereof to the said United States of America we jointly and severally bind ourselves, our heirs, executors, and administrators, jointly, by these presents. Witness our respective names and seals hereto affixed by us, at New Orleans, this eighth day of November, 1863.

Whereas the said Robert Oliver, acting in his capacity of agent and attorney in fact of John Armstrong, has this day filed his petitions of claim and exception to jurisdiction in the name of said
58 John Armstrong, in the above-entitled suit: Now, the condition of the above obligation is such that if the said claimant and surety shall pay and satisfy all such costs, expenses, and damages as may be decreed against them, or either of them, in said cause, then the foregoing obligation is to be void; but otherwise remain in full force and virtue.

(Signed) ROBERT OLIVER.
PATRICK IRWIN.

Signed, sealed, and delivered in presence of—
(Signed) F. B. VINOT, *D'y C'k.*

Answer of the dist. attorney.—Filed January 4th, 1864.

UNITED STATES
vs.
THE CITIZENS' BANK OF LOUISIANA, intervenor in the Armstrong Foundry, &c. } No. 3386.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

59 The answer of Rufus Waples, attorney of the United States of America for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said bill of intervention exhibited by the Citizens' Bank of Louisiana in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said bill of intervention of said Citizens' Bank of Louisiana, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith: That this defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that the said intervenors, the members of said Citizens' Bank of Louisiana, are loyal citizens of the United States.

And this defendant, attorney as aforesaid, further answering, expressly denies that John Armstrong and the property herein seized are indebted to the said intervenor, the Citizens' Bank of Louisiana, in the sum of—1st, seven thousand three hundred and thirty dollars, with interest at 10 per cent. from the first February, 1863, till paid; 2d, the sum of five thousand four hundred dollars, with inter-
60 est at ten per cent. from the first February, 1863, till paid, as stated in said intervenor's bill of intervention.

Further answering, the said defendant, attorney as aforesaid, expressly denies that the said John Armstrong and the property herein seized are indebted in any amount whatever to the said intervenor, the Citizens' Bank of Louisiana.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States approved March 3, 1863, and entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," that in all cases now or hereafter pending, wherein any ship, vessel, or other property shall be condemned, in any proceeding by virtue of the acts above mentioned, or of any other laws on that subject, the court rendering judgment of condemnation, shall, notwithstanding such condemnation and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such ship, vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such pro-
61 ceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property, under

the laws of the United States or of any loyal State thereof: Provided, that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property; and provided also, that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property, in any loyal State wherein such claim arose, the said intervenor is not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause. Without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or necessary for this defendant, attorney as aforesaid, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this
62 defendant, attorney as aforesaid; all of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain and prove, as this honorable court shall direct; and humbly prays that this honorable court will decree that said intervenor's bill be dismissed, with costs and charges in this behalf wrongfully sustained.

And, as in duty bound, will ever pray.

(Signed) RUFUS WAPLES,
U. S. Dist. Attorney for the Eastern District of Louisiana.

Exception to intervention of the Citizens' Bank.—Filed January 4, 1864.

UNITED STATES
ads.
THE CITIZENS' BANK OF LOUISIANA, intervenor in } No. 3386.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

63 The libellant, Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who herein prosecutes for the United States in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in the said intervenor's bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

First exception.—For that said bill and petition of intervention shows that said claimant and intervenor is a resident of the State of Louisiana, which said State is in rebellion and open resistance to the government of the United States.

Second exception.—For that said bill and petition of said intervenor shows no specific lien on, or interest in, the specific property libelled in this cause, that can be enforced against the United States in this cause.

Third exception.—For that said intervenor, by the said petition of intervention, does not bring himself within the act of Congress of the United States entitled "An act to protect the liens upon
64 vessels in certain cases, and for other purposes," approved March 3, 1863, and made a part of this exception.

Fourth exception.—For that said intervenor has not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

Wherefore said Rufus Waples, attorney as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Order, cause fixed for trial.—From the minutes of February 1, 1864.

UNITED STATES
vs.
THE ARMSTRONG FOUNDRY. } No. 3386.

On motion of the district attorney, it is ordered that this
65 cause be assigned for trial, and that the parties interested be notified.

Notice of trial.—Issued February 9th, 1864.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY. } No. 3386.

You are hereby notified that this case is assigned for trial for Friday, the 26th day of February, A. D. 1864, at 10 o'clock a. m.

By order of court.

Witness my hand and seal of the said court, at New Orleans, this 9th day of February, A. D. 1864.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

To MICHAEL HAHN, Esq.

66 *Marshal's return.*

Received 10th February, 1864, and on same day, month, and year served copy of the within notice of trial, at the office of M. Hahn, esq., on his clerk.

(Signed) J. S. BADGER, *Dept. U. S. Marshal.*

the laws of the United States or of any loyal State thereof: Provided, that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property; and provided also, that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property, in any loyal State wherein such claim arose, the said intervenor is not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause. Without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or necessary for this defendant, attorney as aforesaid, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this
62 defendant, attorney as aforesaid; all of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain and prove, as this honorable court shall direct; and humbly prays that this honorable court will decree that said intervenor's bill be dismissed, with costs and charges in this behalf wrongfully sustained.

And, as in duty bound, will ever pray.

(Signed) RUFUS WAPLES,
U. S. Dist. Attorney for the Eastern District of Louisiana.

Exception to intervention of the Citizens' Bank.—Filed January 4, 1864.

UNITED STATES
ads.
THE CITIZENS' BANK OF LOUISIANA, intervenor
in
} No. 3386.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

63 The libellant, Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who herein prosecutes for the United States in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in the said intervenor's bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

First exception.—For that said bill and petition of intervention shows that said claimant and intervenor is a resident of the State of Louisiana, which said State is in rebellion and open resistance to the government of the United States.

Second exception.—For that said bill and petition of said intervenor shows no specific lien on, or interest in, the specific property libelled in this cause, that can be enforced against the United States in this cause.

Third exception.—For that said intervenor, by the said petition of intervention, does not bring himself within the act of Congress of the United States entitled "An act to protect the liens upon
64 vessels in certain cases, and for other purposes," approved March 3, 1863, and made a part of this exception.

Fourth exception.—For that said intervenor has not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

Wherefore said Rufus Waples, attorney as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Order, cause fixed for trial.—From the minutes of February 1, 1864.

UNITED STATES
vs. } No. 3386.
THE ARMSTRONG FOUNDRY.

On motion of the district attorney, it is ordered that this
65 cause be assigned for trial, and that the parties interested be notified.

Notice of trial.—Issued February 9th, 1864.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs. } No. 3386.
ARMSTRONG FOUNDRY.

You are hereby notified that this case is assigned for trial for Friday, the 26th day of February, A. D. 1864, at 10 o'clock a. m.
By order of court.
Witness my hand and seal of the said court, at New Orleans, this 9th day of February, A. D. 1864.
(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]
To MICHAEL HAHN, Esq.

66 *Marshal's return.*

Received 10th February, 1864, and on same day, month, and year served copy of the within notice of trial, at the office of M. Hahn, esq., on his clerk.
(Signed) J. S. BADGER, *Dept. U. S. Marshal.*

Notice of trial.—Issued February 9th, 1864.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY. } No. 3386.

You are hereby notified that this case is assigned for trial for Friday, the 26th day of February, A. D. 1864, at 10 o'clock a. m.

By order of the court.

Witness my hand and seal of the said court, at New Orleans,
67 this 9th day of February, A. D. 1864.

(Signed) F. B. VINOT, *D'y C'k.* [SEAL.]

To L. CASTERA, Esq.

Marshal's return.

Received 10th February, 1864, and on the same day served notice of trial at the office of L. Castera.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Order and continuance.—From the minutes of Febr'y 26, 1864.

UNITED STATES
vs.
THE ARMSTRONG FOUNDRY. } No. 3386.

This cause was called and continued.

68 *Order taxing dist. att'y's fees.—From the minutes of July 11, 1864.*

THE UNITED STATES
vs.
THE ARMSTRONG FOUNDRY, &c., value $15,000. } No. 3386.

Ordered that $300 be taxed as the fees due to Rufus Waples, U. S. district attorney, for services rendered in the above-entitled cause, up to date.

June 30th, 1864.

Rule on U. S. attorney.—From the minutes of July 28, 1864.

THE UNITED STATES
vs.
ARMSTRONG FOUNDRY. } No. 3386.

On motion of H. F. Deblieux, esq., of counsel for the Citizens' Bank, intervenor in this cause, and upon suggesting that the
69 property seized and described in the libel and monition in this case being mortgaged in favor of said Citizens' Bank, not only to secure the amount of the stock-note and promissory note described in the petition of intervention and filed therewith, is also

mortgaged as therein stated, to secure the amount of $28,500, being that of 285 shares of the stock of said bank still unpaid. That the said 285 shares of stock are so attached to the property seized, by the said mortgage, and the obligation of the stockholder towards said bank, the other stockholders, the State of Louisiana, and the holders of the bonds issued for said bank, that they cannot be separated therefrom; that the said shares of stock are property, and being thus inseparable from the land on which they rest, ought to be seized therewith, and if condemned, sold in block with the land and improvements, subject to the rights of said bank; it is ordered that the attorney of the United States show cause, on Saturday next, at 10 o'clock a. m., if he does not sooner consent thereto, why the marshal should not be directed so to amend and extend the seizure of
70 the property to be libelled in this case, by adding thereto and including therein the two hundred and eighty-five shares of stock aforesaid, and to advertise the same therewith, and that in case of condemnation, the whole be decreed to be sold in block as aforesaid.

And the district attorney being in court takes notice of this rule and waives service.

Order and continuance of rule.—From the minutes of July 30th, 1864.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

The rule herein taken, on the 28th instant, came up for trial—H. F. Deblieux, esq., for plaintiff in rule, and district attorney for defendant—when, after hearing counsel, it is ordered that the same be continued indefinitely.

71 *Intervention of the State of Louisiana.—Filed September 2d, 1864.*

United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, John Armstrong, owner. } No. 3386.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The intervention of B. L. Lynch, attorney general of the State of Louisiana, and in his said capacity representing said State, alleges and articulately propounds as follows: That the defendant herein is indebted unto the said State of Louisiana, herein intervenor, in the sum of one hundred and ninety-five dollars and ten cents for this, to wit, that in the year 1862 an assessment was duly and legally made by the State assessor of the State of Louisiana, of all the prop-
72 erty within the limits of the parish of Orleans; that the said assessment roll was duly adopted after the delay required by

law, and shows that the State tax of the said defendant amount to the sum of one hundred and ninety-five dollars and ten cents, all of which will more fully and at large appear from a certified copy of each of said assessment rolls, and other evidence to be produced upon the trial of this cause. That under and by virtue of an act of Congress approved July 16th, 1862, the proceedings in this case must conform as nearly as may be to proceedings in admiralty or revenue cases, and that according to admiralty proceedings and jurisdiction, ordinary or general creditors may claim the property or proceeds of property brought into registry, and to be disposed of or distributed by the court. That under and by virtue of the laws of the State of Louisiana, the property seized and taken into possession of the marshal of the United States was, at the time of such seizure and taking into possession, pledged to the State of Louisiana, in payment of her claims as one of his creditors. That under and by virtue of
73 the *of the* laws of the State of Louisiana, in such cases made and provided, intervenor has a lien and privilege upon the property seized by the marshal aforesaid, which lien or privilege is of a higher rank than any mortgage or other incumbrance whatever; that the said property at the time of such seizure, and previous thereto, was held and owned by the said John Armstrong, subject to and incumbered with a lien and privilege for the payment of intervenor's claim, amounting as aforesaid to one hundred and ninety-five dollars and ten cents. That at the time of filing libel or information, and at the time of the seizure aforesaid by the marshal, intervenor was entitled, by the laws of Louisiana, to enforce her claim and demand specifically against the property seized and taken as aforesaid into the hands of the United States marshal. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore intervenor prays that by an order of this honorable court she may be authorized to appear and prosecute this intervention; that due process of law, according to the course and
74 practice of this court in like cases may issue, and that Rufus Waples, esq., district attorney of the United States for said district, may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to declare, pronounce, and decree that the claim and demand of intervenor against the said John Armstrong, amounting to the sum of one hundred and ninety-five dollars and ten cents, as herein above set forth, be allowed, that judgment for said claim be rendered in favor of intervenor and against the said John Armstrong; that the lien and privilege aforesaid upon the lot of ground seized by the marshal herein, be recognized and enforced for the payment of intervenor's aforesaid claim, with her costs in this behalf expended. That in the event of this court proceeding to render judgment of condemnation against said lot, then that your honor, notwithstanding such condemnation, and before awarding the aforesaid lot of ground or property, or the proceeds arising therefrom, to the United States, or to any inferior or inferiors, person or persons whatsoever, will first

provide for the payment by such lot, or its proceeds,
75 if the same is sold at suit of government, of intervenor's claim and demand aforesaid, and that intervenor may have such other and further relief in the premises as in law and justice she may be entitled to receive, with her costs, &c.

(Signed) B. L. LYNCH.

(Signed) B. L. LYNCH, *Attorney General for Intervenor.*

Sworn to and subscribed before me this 2d day of September, in the year of our Lord 1864.

(Signed) F. B. VINOT, *D'y C'k.*

Notice of intervention to U. S. district attorney.

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG'S FOUNDRY, &c. } No. 3386.

Rufus Waples, U. S. district attorney:

76 Please to take notice that B. L. Lynch, acting in his capacity of attorney general of the State of Louisiana, has this day filed his petition of intervention in the above-entitled cause.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, at New Orleans, this 2d day of September, 1864.

(Signed) F. B. VINOT, *D'y C'k.*

Marshal's return.

Received 3d September, 1864; and on the same day served copy of the within notice personally on C. S. Kellogg, esq., acting U. S. district attorney, at his office in the U. S. court-room building.

Returned September 3d, 1864.

(Signed) M. EGAN,
Deputy U. S. Marshal.

77 *Order taxing late marshal's fees.—From the minutes of September 6th, 1864.*

UNITED STATES
vs.
THE ARMSTRONG FOUNDRY. } No. 3386.

On motion of James Graham, late U. S. marshal for the eastern district of Louisiana, and on suggesting that on the day when his functions as marshal ceased, this case was pending and undecided, it is ordered that the bill of costs, charges, and disbursements be taxed in the sums following, to wit: Fees, $19 50; disbursement, $122 50.

Testimony for libellants.—Filed January 3d, 1865.

Eastern district of Louisiana, U. S. circuit court.

Deposition taken before Chars. Claiborne, U. S. commissioner.

NEW ORLEANS, *December 31st*, 1864—2 o'clock p. m.

78 UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Present, district attorney, Mr. Deblieux.

Henry Hart, for libellants, duly sworn, deposes and says: I reside in this city. I have been president of the city railroad. I have resided in this city for thirty years. I know the Armstrong Foundry. In 1861 the foundry was in operation. I do not know if the foundry did work for the confederate government. I do not know that cannon was made there for the confederacy. I have learned on the street that the foundries were engaged in work for the confederacy.

(Signed) HENRY HART.

Sworn to and subscribed before me this 31st day of December, 1864.

(Signed) CHA'S CLAIBORNE,
U. S. Commissioner.

79 *Hearing and submission of claimant's exception.—From the minutes Jan'y 3d*, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

By consent of counsel, in open court, the exception of claimant to the jurisdiction of the court is now taken up and submitted to his honor without argument.

Order and continuance.—From the minutes of Jan'y 4, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

The court having taken under advisement the exception herein filed by Jno. Armstrong, claimant, on motion of the district attorney, ordered that the cause on its merits fixed for to-day be continued till Friday, 13th instant, at 10 o'clock a. m., and that the claimants be notified thereof.

80 *Notices of trial.—Issued January 4, 1865.*

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY. } No. 3386.

You are hereby notified that this case is assigned for trial for Friday, the 13th instant, January, A. D. 1865, at 10 o'clock a. m.

By order of the court.

Witness my hand and seal of said court, at New Orleans, this 4th day of January, A. D. 1865.

(Signed) F. B. VINOT, *D'y C'k.*

To CUTLER and HENDERSON, Esq's.

Marshal's return.

81 Received January 4th, 1865; and on the 15th day of January, 1865, served a copy of the within notice on Jno. Henderson, jr., in person, he being one of the firm of Cutler & Henderson, attorneys at law, named within.

New Orleans, January 5th, 1865.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Notice of trial.—Issued January 4th, 1865.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

You are hereby notified that this case is assigned for trial for Friday, the 13th day of January, A. D. 1865, at 10 o'clock a. m.

By order of court.

Witness my hand and seal of the said court, at New Or-
82 leans, this 4th day of January, A. D. 1865.

(Signed) F. B. VINOT, *D'y C'k.*

To L. CASTERA, Esq.

Marshal's return.

Received January 4th, 1865; and, on the 5th day of January, 1865, served a copy of the within notice on L. Castera, esq., in person.

New Orleans, January 5th, 1865.

(Signed) M. EGAN, *D'y U. S. Marshal*

Order overruling exceptions.—From the minutes of Jan'y 5, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY. } No. 3386.

The exception to the jurisdiction of the court herein, filed by John

Armstrong, claimant, having been submitted on a former day, and the court having considered the same, doth now order
83 that said exception be overruled, and that two days be allowed to said claimant to file his answer.

Marshal's return.

Received January 6th, 1864; and, on the same day, month, and year served a copy of the within order on J. Henderson, jr., esq., one of the partners of the firm of Cutler & Henderson, esqr's, attorneys.

(Signed) G. HOLLANDER, *D'y U. S. Marshal.*

Demurrer of John Armstrong.—Filed January 7th, 1865.

U. S. circuit court, sixth circuit and eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

84 In this case, John Armstrong, claimant, comes before the court solely for the purpose of excepting or demurring to the libel of information filed therein; and thus excepting and demurring, he shows—

First. That the act of Congress, upon which the libel of information rests, is in violation of the Constitution of the United States, and absolutely null and void.

Second. That no legal cause of action and no lawful grounds for the condemnation and forfeiture of the property seized herein, and alleged or set forth in the aforesaid libel of information; wherefore this appearer prays that this his exception and demurrer be sustained; that the libel of information be dismissed; that the property seized and libelled herein be restored to claimant, and that he recover costs, and have such other and further decree as is suited to law and the nature of the case.

(Signed) JNO. ARMSTRONG.

Sworn to and subscribed before me this 21st day of January, A. D. 1865.

(Signed) F. B. VINOT, *Deputy Clerk.*

85 *Hearing and submission of demurrer, order thereon, and order and continuance of cause.—From the minutes of Jan'y* 13, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

This case came up on demurrer filed by claimant—district attorney for the United States; Geo. S. Lacey, esq., for claimant—when the same was submitted and ordered by the court to be overruled; whereupon, with leave of court, the plea of pardon of said claimant is filed.

And thereupon it was ordered that this cause be continued indefinitely.

Plea of pardon, with leave of court.—Filed January 13th, 1865.

United States circuit court, 6th circuit and eastern district of L'a.

UNITED STATES
vs.
ARMSTRONG FOUNDRY.

86 Now comes before this honorable court this appearer, John Armstrong, for the purpose of pleading pardon and amnesty in bar to the libel of information herein filed by the district attorney of the United States, and thus appearing, he says—

1st. That this respondent is desirous of taking advantage of the privileges and benefits conferred by the proclamation of the President of the United States, bearing date at the city of Washington, on the 8th day of December, A. D. 1863.

2d. That this respondent is not now, nor has he at any time been, a civil or deplomatic officer of the so-called Confederate States; that he has at no time left a judicial station, under the United States, to aid the rebellion referred to by the President of the United States in his aforesaid proclamation; that he is not, nor has he been, a military or naval officer of the rank of colonel in the army, or lieutenant in the navy of the said Confederate States; that he has not left a seat in the Congress of the United States to aid in the said rebel-

87 lion nor resigned a commission in the army or navy of the United States, and afterwards aid such rebellion; and that he has in no way been engaged in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which person may now be, or has been, found in the United States service as soldiers or seamen, or in any other capacity.

3d. That this respondent, on the 10th day of January, A. D. 1865, in the clerk's office of the United States circuit court, sixth circuit, eastern district of Louisiana, in the city of New Orleans, before F. B. Vinot, deputy clerk, duly authorized and empowered to administer the same, took and subscribed the oath prescribed by the President's proclamation of December 8th, 1863.

4th. That the oath aforesaid has been registered for permanent perservation, and that since taking and subscribing to the same, this appearer has kept and maintained the said oath inviolate.

By reason of which said proclamation, and the pardon and amnesty therein proclaimed, promised, and guaranteed, this appearer, John Armstrong, prays that, by the court, the libel of infor-

88 mation herein filed by the district attorney of the United States, and all proceedings had for and in behalf of the United States government, may be dismissed; that appearers be discharged from said premises, in the said libel of information and proceedings contained, and fully restored to the possession of the property seized.

(Signed) JOHN ARMSTRONG.

Sworn to and subscribed before me this 13th day of January, A. D. 1865.

(Signed) . B. VINOT, *D'y C'k.*

Testimony for libellants.—Filed May 15th, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Testimony taken in presence of district att'y and Thomas Gilmore, esq.:

N. O., *May 15th*, 1865, at 12 m.

89 Henry Morton, being duly sworn, deposes and says: I reside in this city, and have resided here since 1845; my occupation is that of foundry man; I never worked in Armstrong Foundry in my life; I was in it in the years 1862 and 1863; I had some work done there; it was that of making a sugar mill; in the fore part of 1862 I was in there, and Armstrong was doing city railroad work, and I was not there in the latter part of 1862 and 1863; I was in there during the year 1861, the fore and latter part thereof; he was doing plantation work pretty much in 1861; he was making machinery; he was making some for a boat on the other side of the river—a packet boat; I do not think it was for the confederate government; I do not know whether there were any cannon madet here in 1861 or 1862. In the early part of 1861 he told me he would not work for the confederate government; I never saw any cannon, shot, or shell in there; I saw some shot, &c., a large pile of iron there in the early part of 1861; they had been there several years; they had been brought from Baton Rouge; I never saw any machinery there that was
90 appropriate for vessels-of-war; I do not know whether the foundry furnished any machinery for the confederate government; I never saw any guns or rifles in there at any time; I never saw any warlike munitions in there.

(Signed) HARRY NORTON.

Sworn to and subscribed before me this 15th May, 1865.

(Signed) CHAS. CLAIBORNE,
U. S. Commissioner.

Robert Oliver, being duly sworn, deposes and says: I was a book-keeper of Mr. Armstrong in 1861 and 1862; that foundry did work for the confederate government; it was the manufacture of some shot and shell; I think that was in the year 1861; I do not recollect what Mr. Armstrong got for the work; I do not know for what vessels they were made; the order came there from an officer of the government, and we had to make them; I do not know what they did with
91 them; Mr. Armstrong received some pay for his work; there were one or two small jobs of machinery done for the confederate government about October or November, 1861; they were wheels, &c.; I believe this wheel was for some confederate gunboat; I think the price of this wheel work was some 400 or five hundred dollars; I believe they owe him the sum yet; I am not sure; there was a running account kept, and he received some money on account; there were some boilers also made for the confederate government

about the same time; I do not remember the price charged for them; I believe there was one or two contracts, but as a general thing there was no contract at all for this work done for the confederate government; I believe Mr. Armstrong is a citizen of the United States; I know him some 10 or 12 years, and understand he has resided here some 30 years; he is an Irishman by birth; I do not remember any other work made by him for the confederate government; these boilers I have mentioned were for a confederate vessel; I think there were 3 or 4 boilers made; the confederate government some-
92 times paid for their work, and sometimes did not; payments were made in the city; the foundry did work for the confederate government, off and on, up to the arrival of the federal fleet; I think these boilers were for a confederate vessel down on the bayou; Mr. Armstrong was in the city during those times, and was the owner of the foundry; Mr. Armstrong had no one in charge; the confederate government had charge of it pretty much.

Cross-examined:

It is to my knowledge and is a fact that Mr. Armstrong did work for the confederate government only through compulsion; it is to my knowledge that officers of the confederate government came there during Mr. Armstrong's absence to have work done, and threatened to take the foundry in their charge if it were not done; they forced Mr. Armstrong to stop the regular work of the foundry in order to do their work under the threat of taking the foundry themselves; the boilers I have alluded to were some we had on hand for sale, and were not made for the confederate government; I believe Mr.
93 Armstrong has some on hand there now. When I spoke of contract, I alluded to those connected with these boilers. The first instruction I had from Mr. Armstrong when I went into his employ was to go on with the regular work for the planters on the coast and private parties in the city; that he did not think confederate government work would last long, and he did not wish to have anything to do with it. He had as much regular work as his foundry could do; that is, regular work for his customers; in fact he had more regular work than he could well attend to. Mr. Armstrong has been a very great loser by the action of the confederate government in stopping his regular work, and forcing him to attend to theirs.

Re-direct:

The confederate government owes Mr. Armstrong for work done some $20,000; I think they paid him some 25,000 or 26,000 dollars.

Being asked if it is usual for foundry men to instruct their book-keepers as to what work shall be done, witness answers: Mr.
94 Armstrong looked to me for business outside of the office, and would often confer with me about the work; I do not know what the usage of other foundries are; I derived my information as to its being compulsory for Mr. Armstrong to do this work from General Lovell's brother, Col. Lovell, and other officers of the confederate government, who threatened to take charge of the foundry themselves if he did not attend to those orders about the shot and shell,

and the other work. The first orders were given by the confederate naval officers in regard to hurrying up the work. I do not remember all the names of the naval officers, one was named Robbins; one was a lieutenant, who afterwards took charge, and was placed over Robbins; I cannot really remember his name. This was in regard to the general work for the confederate government; these boilers were part of this work; those orders were not in writing; they were delivered to me.

Re-cross-examined:

As well as I know, the first work done for the confederate
95 government was in August, 1861, and upon compulsion; I cannot give the precise time.

Re-direct:

I know it was from compulsion from his having been notified by officers in charge of the confederate government in this city.

(Signed) R. OLIVER.

Sworn to and subscribed before me this 15th May, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

Samuel Burchfield, being duly sworn, deposes and says: I know Armstrong's foundry; I never worked in it; I never was in it in 1861 or 1862, and do not know whether it worked for the confederate government; I never saw any work for that government come out of there; I am a foundry man by occupation; I do not remember being in that foundry from 1854 to within the past two years, when I called in there once or twice; I do not know what work was done there in 1861 or 1862; I do not know what work he was doing; I never
96 heard him say.

(Signed) SAMUEL BURCHFIELD.

Sworn to and subscribed before me this 15th May, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

Demurrer to plea of pardon of Armstrong.—Filed May 16th, 1865.

UNITED STATES
vs.
THE ARMSTRONG FOUNDRY, &c. } No. 3386.

To the honorable the judges of the sixth judicial circuit and eastern district of Louisiana:

And the said libellants, by Rufus Waples, U. S. district attorney for said district, as to the said plea of him the said claimant, John Armstrong, by him above pleaded, saith that the same, and the matters and things therein contained in manner and form as the
97 same are above pleaded and set forth, are not sufficient in law to bar or preclude said libellants from having or maintaining

their aforesaid action against him, said claimant, and that the said libellants are not bound by law to answer the same, and this they are ready to verify. Wherefore, for want of sufficient plea in this behalf, said libellants pray judgment by reason of the matters and things set forth in said libel.

(Signed) RUFUS WAPLES, *U. S. Attorney.*

Order to amend libel, &c.—From the minutes of May 16, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

This cause was called for trial—district attorney for libellants; Buchanan and Gilmore, for claimant; H. F. Deblieux, for Citizens' Bank of Louisiana, intervenor—when, on motion of the dis-
98 trict attorney, ordered that he have leave to amend the libel without re-engrossing, by inserting after the words libel of information, the following, "said lot being more particularly described as follows: A certain portion of ground situate in the suburb Delord in this city, and bounded by Front, Suzette, and New Levee streets, and a certain alley called Withers alley, 20 feet wide, running parallel with Suzette street; said portion measuring 86 feet 6 inches front on said Front street, 307 feet front on said Suzette street, 86 feet 6 inches front on New Levee street, and 307 feet font on said Withers alley, American measure; together with the buildings and improvements thereon" And on motion of H. F. Deblieux, esq., he is allowed to amend the intervention of the Citizens' Bank of Louisiana, by adding, "whose president and directors are loyal citizens of the United States." And the counsel for defendant having obtained leave of court to withdraw his plea of pardon, the cause was continued till Tuesday, the 23d instant, at 11 a. m., and on motion of the dist. attorney, it is ordered that attachments issue against William
99 Steel and Wm. Tracy, witnesses who, although regularly summoned, have failed to make their appearance, said attachments returnable on said 23d instant.

Testimony for libellants.—Filed May 22*d*, 1865.

United States circuit court, 6th circuit, eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Testimony taken by Charles Claiborne, U. S. commissioner, in presence of district attorney, for libellant; Thomas Gilmore, for claimant.

NEW ORLEANS, *May* 22*d*, 1865—5 p. m.

William Tracy, being duly sworn for libellant, deposes and says: I have resided in this city for the past 14 or 15 years. I am a ma-

chinist by occupation. I am acquainted with the Armstrong
100 Foundry. I worked there in the years 1861 and 1862. We done work for the city railroad, and some work, which it was rumored around was for the confederate government. This work was making shells and solid shot. I never saw any cannon made there. The shell and shot were made in the years 1861 and 1862, just before the fleet came up. I saw some taken away in 1861 and 1862, but I do not know where they were taken; they were taken away by draymen; unknown to me. I worked myself, a while, in making these shot and shell. I never saw any confederate officers or soldiers in the foundry during this time, to my knowledge. The rumor was that these shot and shell were for the confederate government; my source of information were the workmen in the shop. There was a shaft made there which was made as was said for a gun-carriage. I believe there were axles made for gun-carriages. There may have been 12 axles or more made for gun-carriages; I cannot say exactly. This was in 1861 and 1862. I never saw any cannon there. There were boilers made there. I do not know, nor did I hear, what they were for.
101 I worked on some wheels belonging to gun-carriages. Mr. Armstrong had charge of the foundry while this work was going on. He was about the building while this work was going on. I was during this time in the employ, paid for my work by Mr. Armstrong. I do not know of any work being done for steamboats. I never heard Mr. Armstrong say who the work was for. This was all done before the arrival of the federal fleet of 1862. I cannot say how long the foundry were making shot and shell; perhaps 10 months, more or less. I do not know where they were hauled; I could see the draymen hauling them out of the yard, but I do not know where they went to.

Cross-examined:

I was simply a workman in the foundry. I don't know who ordered the work, or for what purpose it was used. All I know is that the work I have mentioned was done there; the foundry did a great deal of general work besides. I believe orders for work were
102 left at the office. I never go into the office much. The foundry was working for the city railroad and for other parties. I have no opportunity of seeing persons that come to the office. Mr. Oliver was the principal person in the office at this time. This work, or rather a part of this work, or gun-carriages left there, I do not know where it went to; I do not know when it left; of my own knowledge. I do not know whether they were for gun-carriages or not; I never saw a gun on them.

Re-direct:

These wheels were appropriate for gun-carriages, but I do not know whether they were used as such. I believe all fixings for gun-carriages were made there, but I had nothing to do with any but the wheels.

(Signed) WILLIAM TRACY.

Sworn to and subscribed before me this 22d May, 1865.
(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

William Steel, being duly sworn for libellant, deposes and
103 says: I am a resident of this city. In 1861 and 1862 I was acting as a foreman in Armstrong Foundry. There were shot and shell made there in 1861 and 1862 for the confederate government, I presume; I do not doubt but they were for that government. They were making them for about 5 or 6 months. This was in the latter part 1861 and fore part of 1862. I suppose there were about 15 or 20 rifled shell could be turned out a day. I suppose there were about 30 or 40 solid shot a day turned out; to the best of my knowledge, there were but few solid shot turned out. I was in the employ of Mr. Armstrong, and paid by him during that time. I went into his employ about 1855 or 1856, and continued in his employ all the time. There were no fuzes made there. Mr. Armstrong was about the foundry, now and then, every day or so. I received my orders to make these shot and shell from Mr. Armstrong and his clerk. The shot and shell were taken away from the foundry; they were taken away by draymen; I do not know who they were; that was the
104 clerk's business. The clerk said they were taken to the custom-house, but I don't know where they went. We turned a few shafts, and bored out a few wheels for the confederate government, but they never left the shop. They were there when the fleet arrived, and had been finished about a month or two previous to that. I principally received my orders from the clerk. I do not remember whether he ever told me who they were for. I knew very well they were for warlike purposes. There were no cannon there; we cast no cannon; he never made any effort to cast cannon. There was no work done there for any transports. I do not know what Mr. Armstrong received for making shells. We stopped this work a day before the fleet arrived before the city. When it was known that the fleet had passed the forts none of the work was taken from the shop. I continued right along with Mr. Armstrong. The different parts of iron works for gun-carriages were made there. These shells were of different sizes, 18, 24, 32, 44, and 64; some 9-inch, some ten-inch, and some eleven-inch shell, were made there.

105 Cross-examined:

When I say 15 shell were made a day, I do not mean to say they were turned out every day; the work was done at intervals. The foundry did a great deal of general work, as much work as the foundry could do; I do not know whether the foundry was forced to do this work; all I know is, the clerk said the work had to be done. I know I received my orders from the office; all the business was done in the office. Mr. Robert Oliver was the clerk at that time; he is not now in the employ of Mr. Armstrong; he is now employed in the True Delta office. Mr. Tracy is not now in the employment of Mr. Armstrong. All I know about this work is that it was done in

the foundry, and from my knowledge as a mechanic, I suppose for the confederate government; I have no knowledge beyond that. Mr. Armstrong has never been in the army or navy in any way, and has always conducted himself as a peaceable and law-abiding citi-
106 zen. A great deal of the shot and shell remained in the foundry when the federal fleet arrived. We have melted them up since at different times.

Re-direct:

I suppose Mr. Armstrong is a citizen; I know he went to the polls for the purpose of voting. I do not know where he was born.

(Signed) W. H. STEELE.

Sworn to and subscribed before me this 22d day of May, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

William Chaning, being duly sworn, deposes and says for libellant: I reside in this city; I was in Armstrong Foundry somewhere about 1861 or 1862; I was not employed there; I saw some shot and shell in there; I never saw them making them; I believe I saw some shot shell there in the fall of 1861. I never saw any gun-carriages in there.

(Signed) WILLIAM CHANNING.

107 Sworn to and subscribed before me this 22d May, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

Hearing and submission of cause.—From the minutes May 23, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

This cause came up for trial—district attorney for libellants, Buchanan & Gilmore for defendants, H. F. Deblieux for Citizens' Bank of Louisiana—when, after hearing the pleadings, evidence, and argument, the cause was submitted to the court.

Note of evidence.—Filed May 23d, 1865.

108 UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Minute of evidence, May 23d, 1865.

District attorney offered the warrant, monition, and marshal's return, and the testimony of Wm. Tracy and W. Steele.

Citizens' Bank offered in evidence acts A, B, C, and stock-notes D and E.

Armstrong, claimant, offered the deposition of Robert Oliver.

Defendant now offers his plea of pardon, which is rejected by the court, to which ruling the counsel for the defendant excepted, and reserved his bill of exception.

Acts A, B, C, D, and E, offered in evidence by the Citizens' Bank on the 23d day of May, 1865, are copied at pages 20, 31, 42, 48, and 51 of this transcript.

The deposition of Robert Oliver, offered the 23d day of
109 May, 1865, is copied at page 90 of this transcript.

And the plea of pardon, offered by defendant this 23d day of May, is also copied at page 85 of this transcript.

The warrant, monition, and marshal's return, and the testimony of Wm. Tracy and W. Steele, offered this day by the district attorney, are copied at pages 11, 12, and 13 of this transcript. Testimony of Wm. Tracy at page 99, and that of W. Steele at page 102, of this transcript.

Judgment.—From the minute book of May 31*st*, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

For the reasons orally assigned by the court, it is ordered, adjudged, and decreed that the defendant's plea of pardon be rejected, and the Armstrong Foundry, situate at the corner of New Levee and Erato streets, together with all the tools and appliances there-
110 unto belonging, and the lot or parcel of ground on which the foundry stands, and all the buildings thereunto appertaining, more fully described in the libel of information on file, and Exhibit A thereto attached, be, and the same are hereby, condemned as forfeited to the United States.

It is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 20th of July, 1865, and that upon the return thereof, the proceeds be distributed according to law.

It is further ordered, adjudged, and decreed that the claim of the Citizens' Bank of Louisiana be recognized, as stated in the intervention filed by said bank, and that there be judgment in favor of said bank, as follows, to wit: That the property described in the libel of information, and in the claim and intervention, and condemned as confiscated to the United States, together with the three hundred and five shares of the capital stock of said Citizens' Bank, reduced to 285 shares bearing thereon, be sold in block on the following terms and conditions, viz: The purchaser to assume the position and
111 all the liabilities of a stockholder of said bank for the said shares of stock, to furnish in part payment of the price of adjudication to said bank, his stock-note of the sum of six thousand four hundred and five dollars ($6,405) payable the 1st January, 1866; and also to assume the payment of the balance due on a note of Mrs. S. A. Kennedy in favor of said bank, dated the 20th August, 1849,

payable on the first February, 1850, of the sum of eight thousand three hundred and twenty-five dollars, renewable from year to year, agreeably to the laws governing stock loans, on paying at each renewal a curtailment of two hundred and twenty-five dollars on the principal, and the interest on the balance in advance, at six and a half per cent. per annum, which note will be reduced by succession payments or renewals to the sum of four thousand six hundred and twenty-five dollars. The stock-note aforesaid to be renewable according to the charter of said bank and its amendments, and duly identified with the marshal's deed of sale, and the purchaser to assume in said deed the mortgage granted to said bank by said Mrs.

112 Sarah Ann Withers, wife of J. M. Kennedy, by an act passed before Charles Boudousquie, notary public, on the 20th August, 1849, and assumed in favor of said bank, by John Armstrong, by another act, before the same notary, Boudouquie, passed on the 11th December, 1849, and the obligations of said Armstrong and Mrs. S. A. Kennedy, contracted in another act passed before Adolphe Boudousquie, notary, on the 11th February, 1852, and to pay the balance of the price in cash.

And it is further decreed that out of said balance the said Citizens' Bank do recover, with privilege and mortgage on said property, the sum of one thousand and sixty dollars, amount of two instalments due on the stock loan and on the above described note, now overdue, and interest at ten per cent. per annum on the sum of twelve thousand one hundred and eighty dollars, from the 1st January, 1864, till day of sale. The purchaser further to pay interest at six and a half per cent. per annum, in advance, on the amount of his stock-note, and on that of the balance due as aforesaid on the said note assumed, from the day of sale to said first February, 1866.

Judgment rendered May 31, 1865. Judgment signed June 7th, 1865.

(Signed) E. H. DURELL, *Judge.*

113 *Rule for a new trial.—From the minutes of June* 2, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

On motion of Buchanan and Gilmore, proctors for John Armstrong, claimant herein, it is ordered by the court that the district attorney of the United States for this district, Rufus Waples, esq., show cause on Tuesday, the 6th instant, at 11 o'clock a. m., why the judgment or decree of confiscation herein rendered should not be set aside, and a new trial granted upon the grounds filed.

Grounds.—Filed June 2d, 1865.

1st. The act of Congress approved August 6, 1861, upon which present prosecution was based, is unconstitutional, and is null and void.

2d. Even if said act of Congress should be held to be constitutional, the property herein libelled is not liable to confiscation, inas-
114 much as the said property was not purchased or acquired, sold or given, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting the late insurrection or resistance to the laws of the United States, or any person or persons engaged therein, nor did the said claimant use or employ, or consent to the use and employment of the same for such purpose.

3d. The said act of Congress does not contemplate the seizure of real estate and buildings thereon, and property immovable by destination thereunto attached, as liable to capture under said act, and consequently the property herein libelled is not the subject of capture and prize within the meaning of said act, and was in fact never captured; and the articles, libelled and inventoried herein, enumerated in Exhibit A, were not used for insurrectionary purposes, and were never captured.

4th. The said claimant violated no law of the United States in yielding obedience to the military authority then in possession of the city of New Orleans, and State of Louisiana, and to which the
115 inhabitants had submitted as to a government de facto. (U. S. *vs.* Rice, 4 Wheaton, 246; U. S. *vs.* Hayward, 2 Gall., 486.)

5th. The evidence fully establishes that the work complained of, done at the foundry of the claimant, was done under compulsion and threats of expulsion from his said property, and under the well-founded apprehension and belief on the part of the claimant that the military authorities would seize the said foundry and expel the said claimant therefrom.

6. The evidence offered on the part of the libellant is insufficient to maintain the decree.

7. The proceedings herein and the decree herein rendered violate the articles V, VI, and VII, of the amendments to the Constitution of the United States, and the 3d section of article III of said Constitution.

8. The plea of pardon and oath of amnesty offered by said claimant were a complete bar to the prosecution herein, and the court erred in rejecting the same.

Order dismissing rule.—From the minutes of June 7th, 1865.

116 UNITED STATES *vs.* ARMSTRONG FOUNDRY. } No. 3386.

By consent of counsel, the rule taken for a new trial by John Armstrong, claimant herein, was taken up—Thomas Gilmore, esq., for plaintiff in rule, district attorney for libellants—when, after hearing argument, and for reasons orally assigned by the court, it is ordered that the rule be dismissed and the new trial refused.

Bill of exception.—Filed June 8th, 1865.

Circuit court of the United States.

UNITED STATES
vs.
ARMSTRONG FOUNDRY. } No. 3386.

Be it remembered that on the trial of this cause, John Armstrong, claimant of the property libelled in the above-entitled cause, offered the plea of pardon and amnesty heretofore filed in this cause, together with the certificate of the clerk of this court annexed to said
117 plea, showing that he, the said Armstrong, had duly taken and subscribed the oath prescribed by the proclamation of the President of the United States of the 8th of December, 1863, and also offered a duly certified copy of said oath. But the court refused to receive the same, to which ruling of the court the said Armstrong excepted and tendered this his bill of exceptions for signature.

(Signed) E. H. DURELL, *Judge.*

Hearing and submission of petition of appeal.—From the minutes of June 8th, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

Thomas Gilmore, esq., one of the proctors for the defendant, this day submitted to the court the motion and petition of the defendant praying for an appeal to operate as a supersedeas.

118 Whereupon the court took time to consider, and ordered that in the meantime the property condemned be appraised by the real estate appraisers, for the purpose of ascertaining the amount of the bond to be furnished by the defendant, in case the appeal prayed for should be granted.

Notices to appraisers.

United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

To S. G. Heartt and S. L. Hill:

Take notice that you have been this day appointed appraisers, for the purpose of ascertaining the value of the property libelled in this case, and you are to file the report of your appraisement within the shortest possible delay.

By order of court.

119 New Orleans, June 8th, 1865.

(Signed) F. B. VINOT, *D'y Clerk.*

Received June 8th, 1865, and on the same day served a copy of this answer in the hands of S. L. Hill, one of the appraisers named, for himself and H. G. Heartt.

June 8th, 1865.

(signed) M. EGAN,
Deputy U. S. Marshal.

Answer and claim of Jno. Armstrong.—Filed with leave of court, June 13th, 1865. Nunc pro tunc, as of date 23d May, 1865.

UNITED STATES
vs. } No. 3386.
FOUNDRY, &c.

To the honorable the circuit court of the United States in and for the sixth circuit and eastern district of Louisiana:

120 The answer and claim of John Armstrong, residing in the city of New Orleans, a loyal citizen of the United States, to the libel of information of Thomas Waples, esq., district attorney of the United States, in the above-entitled cause, articulately propounds as follows, to wit:

1. That this respondent and claimants is the true and bona fide owner of the property described in said libel of information, and in the [illegible] thereunto annexed, and that no other person is the owner thereof.

2. In answer to the first article of said libel respondent says that he does not deny the seizure by the marshal of the United States for the district of the said property.

And he does not deny the allegations of the second and third articles of said libel.

3. For answer to the several charges or allegations contained in the 4th article of said libel, respondent says, that he does not deny that after the dates mentioned in said article projectiles of war were manufactured at said foundry, and material furnished for the en-
121 emies of the United States, and that some portion, or machinery, or tools in said foundry were used for that purpose, but that he, this respondent, did not consent to the use or employment of the same for that purpose, and did not wittingly aid, abet, or procure assistance to the laws of the United States within the meaning of said act, or aid and abet any person or persons engaged in [illegible] the said [illegible] was not purchased [illegible] or employed [illegible] purpose of aiding [illegible] to the [illegible] or such owner and property to be used or employed for the purposes charged

in said article of said libel. But that on the contrary this respondent alleges the truth to be that although projectiles of war and materials
122 for the use of the enemies of the government of the United States, were manufactured and furnished as aforesaid, the same were so manufactured and furnished under and by compulsion of the military authorities then in possession of the city of New Orleans, and State of Louisiana, exercising the functions of government, and under threats of seizure of his said property and expulsion of this respondent, therefrom, by the said military authorities, if the said projectiles of war and materials were not made and furnished as aforesaid.

5. And that by reason of the premises the said property, or any part thereof, is in no manner forfeited to the United States, and ought not to be confiscated and condemned as prayed in said libel.

Wherefore the said respondent and claimant prays that his said property may be restored, with costs and damages, and for such further aid, relief, and remedy as to law and justice may appertain, and this court is competent to grant.

(Signed) BUCHANAN & GILMORE,
Proctors for Respondent.

(Signed) JOHN ARMSTRONG.

Sworn to and subscribed before me this 12th day of June 1865.

(Signed) CH'S CLAIBORNE, *Clerk.*

123 *Report of appraisers.—Filed June 13th*, 1865.

United States appraisers' report confiscated property, &c.

UNITED STATES
vs.
THE EFFECTS OF THE ARMSTRONG FOUNDRY. } No. 3386.

To the honorable district court for the eastern district of Louisiana:

We, the undersigned appraisers to this honorable court, duly appointed and sworn, have the honor to report that on the twelfth day of June, 1865, we proceeded to inspect the below described property for the purpose of ascertaining its value at this time, and after a careful and thorough examination, find that the present cash value is as set opposite the property below.

No. and description of the property.	Value.
Office: 1 black walnut desk, 1 standing desk, 1 copy press, 2 iron safes, 6 office chairs, 1 mahogany sitting desk, 1 wall clock, 1 barometer	$75
124 Brought forward	75
Store-room, lot No. 1: Sundries, consisting of sash-weights, bolts, tackle blocks, shovels, paints, oils, globe lamp glasses, lead pipe, &c	125
Coal, lot No. 2: About one thousand barrels coal, represented as the property of Williamson Smith	800

Lot No. 3: Consisting of three rolling machines, 1 iron shears, 2 steam horizontal engines, 3 forges and tools, sundry patterns, boiler iron, old, 1 iron cistern, 16 drums, cog wheels, pulleys, and barrels of old iron, 2 anvils, 19 bars round iron, short and long, 1 lathe slide, 2 trucks, 1 sugar roller 1,750

Lot No. 4: 1 machine wrench, 1 large steam boiler, 1 bellows, 1 rolling mill, 1 lot of copper, lead, brass, and composition in iron room, 1 lot of old iron, 1 large scale, 1 four-wheel truck, 1 large boiler, horizontal and upright, 1 lot boiler plates 1000

1 lot car wheels, 1 small revolving forge and bellows, 1 boiler, 4 anvils, 1 boiler truck, 1 shaft, 2 truck wheels and axles, 1 lot grate bars, 1 lot pig iron, 1 boiler head, sundries of iron and parts of machinery, 1 lot shells, round 525

Forward $4,275

125 Am't forward $4,275

Lot No. 5: 1 long sliding lathe, 5 bed plates, sundry patterns, 1 lot bolts, 1 lot old iron, 2 round shafts, 1 lot valve pipes, 1 drum, 2 valve pipes or steam chests, 1 vice, 1 thread-cutter machine 380

1 lot iron boxes on bench, 1 lot iron bars and bolts, round and square, 1 old pumping machine, 1 lot bolts 100

1 lot rail switches, 2 sugar rollers, 1 lot car wheels, 1 large band wheel, 1 large fly wheel, 2 iron frames, sundry irons for coupling head plates, &c., gas-house retorts, furnace heads 475

1 lot old and new grate bars, 4 mill cheek furnace doors, 1 lot spherical shell, 1 lot old iron, cast and wrought 75

1 pair scales, 1 lot large and small cog wheels, 1 lot short pipes, sundry irons, 1 sugar-mill frame, 2 cheeks, 1 lot steam valves, 2 iron boxes, 2 bed-plates for sugar-mills, 5 round shafts, 1 sliding lathe 425

Forward $5,730

126 Am't brought forward $5,730

Lot No. 6: 2 planing machines for iron, 2 sliding lathes, 3 drilling machines, tools and wrenches to these machines, 1 wheelbarrow, 1 horizontal steam engine, 1 upright furnace for melting iron, 1 blower, 1 boiler and furnace, 1 iron cistern, 1 grindstone, 1 lot pulleys and shafting throughout, sundry, irons consisting of drills, steam-chests, and plates, various kinds, 10 pieces finished and unfinished shafting 1,025

	Lot No. 7: Work bench, vices, tools, 2 steam-chests, 1 iron pipe elbow, 1 governor, 1 lot strapes, 2 steam valves, 1 lot rail car wheel-boxes, 2 steam pumps, 2 valves, 1 large lot patterns and moulds, wood and iron, 1 cylinder for making facing sand, 1 lot pig iron, 4 saddles, 1 truck, 4 wheels, 1 hoisting crane, 1 brass furnace, 1 lot gas boxes for pavements, 2 cast iron pressure plates.....	450
	Forward.....	7,205
127	Am't brought forward..... .....$7,205	
	Lot No. 8: 2 horizontal steam engines, 1 lot round iron bars, 1 lot ventilators, 1 lot globe glasses for lamps, sundries of machinery and parts, 1 lot iron footing for tin leaders, sundry plates, about 5 barrels coke, 1 lot round iron shafts.....	1,375
	Up stairs: 3,000 feet white pine lumber, more or less, 1 lot patterns, 1 lot crucibles, 1 turning lathe, sundry of patterns, 2 carpenters' side benches.....	525
	Opposite shop on vacant lot:	
	Lot No. 9: 6 boilers, various kinds, 1 furnace head, 1 large draining wheel, 1 large shears and appliances, 1 large fly wheel, 8 iron columns, 9 lengths T railroad iron, and sundries of iron work, various kinds and sizes.....	625
	Lot of ground and improvements consists of 1, a half brick house, front on New Levee street, say about 87 feet by about 200 feet depth and front on Erato; a hollow square, open, and inside not roofed, with two-story brick office, &c., building on Erato street, say, building and improvements.....	8,000
		$17,730

128 (Signed) H. G. HEARTT,
(Signed) SAMUEL L. HILL.
United States Appraisers, New Orleans.

Order granting appeal.—From the minute book June 13, 1865.

UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

The court having considered the motion and petition submitted by the proctor for the defendant on 8th instant, and the appraisers having made their report, it is ordered that the said motion and petition be now filed, and that the appeal be granted as prayed for; the appellant giving bond in the sum of twenty-seven thousand dollars, with good and solvent security conditioned as the law directs. Said appeal to be returnable to the Supreme Court of the United States the first Monday of December next.

129 *Motion for appeal.—Filed June* 13, 1865.

United States circuit court, eastern district of Louisiana.

THE UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

On motion of Buchanan and Gilmore, attorneys for the claimant, John Armstrong, and on presenting and filing a petition on his behalf representing that he is aggrieved by the decree herein rendered on the 31st day of May, 1865, and signed on the 7th June, 1865, condemning the property libelled in this cause as confiscated to the United States and praying an appeal therefrom to the next term or the Supreme Court of the United States, the same to operate as a supersedeas, it is ordered that an appeal be allowed as prayed for upon said claimant's giving bond, with good solvent security, conditioned according to law, in the sum of

130 *Petition for appeal.—Filed June* 13, 1865.

THE UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

To the honorable the judges of the circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana:

The petition of John Armstrong, a loyal citizen of the United States residing in New Orleans, claimant of the property libelled in the above-entitled cause, with respect shows: that he is aggrieved by the final decree herein rendered on the thirty-first day of May and signed 7th June, 1865, condemning the said property as confiscated to the United States, and is informed that there is error therein to his prejudice. Wherefore he prays that an appeal be allowed him therefrom, returnable to the next term of the Supreme Court of the United States, and that the same may operate as a supersedeas,
131 upon his giving bond, with good and solvent security, conditioned according to law, in such sum as the court may direct; and he will ever pray, &c., &c.

(Signed) BUCHANAN & GILMORE,
Proctors for Claimant.

Bond for appeal.—Filed June 13*th*, 1865.

Know all men by these presents, that we, John Armstrong, as principal, and Patrick Irwin, as security, are held and firmly bound, jointly and severally, unto the United States of America, in the sum of twenty-seven thousand dollars lawful money of the United States of America, to be paid to the said United States of America and their assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the twelfth day of June, in the year of our Lord eighteen
132 hundred and sixty-five.

Whereas John Armstrong has this day presented a petition to the honorable the circuit court of the United States for the sixth circuit holding sessions in and for the eastern district of Louisiana, praying an appeal to the next term of the Supreme Court of the United States from the final decree herein rendered in the case of the United States *vs.* Armstrong Foundry, No. 3386 of the docket of said circuit court, condemning the property therein libelled as confiscated to the United States, which said decree was rendered on the 31st day of May, 1865, and signed on the 7th June, instant.

Now, the condition of the above obligation is that we, the above bounden, John Armstrong, and Patrick Irwin, will well and truly pay to the said United States of America, appellees and libellants in said cause, all such damages and costs as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) JOHN ARMSTRONG. [L. S.]
PATRICK IRWIN. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) CH'S CLAIBORNE, *Clerk.*

133 Patrick Irwin, being duly sworn, says that he signed as security the within bond, that he resides in the city of New Orleans, and is worth in unincumbered real estate the sum of twenty-seven thousand dollars, all and above all his debts.

(Signed) PATRICK IRWIN.

Sworn to and subscribed before me this 13th June, 1865.
(Signed) F. B. VINOT, *D'y Clerk.*

Security on this bond approved and accepted June 19th, 1865.
(Signed) E. H. DURELL, *Judge.*

134 UNITED STATES
vs.
ARMSTRONG FOUNDRY, &c. } No. 3386.

The United States of America, eastern district of Louisiana.

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal granted and on file in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein John Armstrong, claimant and appellant, and the United States of America, are defendants, to show cause, if any there be, why the judgment rendered against the said John Armstrong, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this thirteenth day of June, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

Indorsed: United States circuit court, No. 3386, United States *vs.* Armstrong Foundry, &c.—Citation of appeal.

Marshal's return.

135 Received June 15th, 1865, and on the 16th day of the same month and year, I served a copy of the within notice of citation of appeal on Rufus Waples, esq., U. S. district attorney, personally. Ret'd June 17th, 1865.

M. EGAN, *D'y U. S. Marshal.*

136 UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

Clerk's office:

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 135 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of United States *vs.* Armstrong's Foundry, &c., No. 3386 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 29th day of August, A. D. 1865.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

[5-ct. rev. stamp, canc'd]

I, Edward H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 29th day of August, A. D. 1865.

E. H. DURELL, *Judge.*

[5-ct. rev. stamp, canc'd.]

Filed December 11, 1865.

SUPREME COURT OF THE UNITED STATES.

No. 74.

ARMSTRONG FOUNDRY, &c., APPELLANT,

vs.

UNITED STATES.

AGREED STATEMENT OF FACTS.

In the Supreme Court of the United States.

Appeal from judgment of the U. S. Circuit Court for the eastern district of Louisiana.

JOHN ARMSTRONG, claimant, appellant,
vs.
THE UNITED STATES, libellant, appellee.

Comes the claimant, John Armstrong, a loyal citizen of the United States, and also a citizen of the State of Louisiana, and by leave of this court, pleads and relies upon a full pardon granted to him on the 5th of March, A. D. 1867, by Andrew Johnson, President of the United States of America, which is here to the court shown, and which is under the great seal of the United States and is in the words and figures, following, to wit:

"Andrew Johnson, President of the United States of America, to all whom these presents shall come, greeting:

"Whereas, John Armstrong, of New Orleans, Louisiana, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and penalties; and whereas, the circumstances of the case render him a proper object of executive clemency: Now, therefore, be it known, that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said John Armstrong, a full pardon and amnesty for all offences by him committed, arising from partici-

pation, direct or implied, in the said rebellion, conditioned as follows: 1st. The pardon to be of no effect until the said John Armstrong shall take the oath prescribed in the proclamation of the President, dated May 29, 1865. 2d. To be void and of no effect if the said John Armstrong shall hereafter acquire any property whatever in slaves or make use of slave labor. 3d. That the said John Armstrong first pay all costs which may have accrued in any proceedings instituted or pending against his person or property before the date of the acceptance of this warrant. 4th. That the said John Armstrong shall not, by virtue of this warrant, claim any property, or the proceeds of any property, that has been sold by the order, judgment, or decree of a court under the confiscation laws of the United States. 5th. That the said John Armstrong shall notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon. In testimony whereof, I have hereunto signed my hand and caused the seal of the United States to be affixed. Done at the city of Washington, this fifth day of March, A. D. 1867, and of the independence of the United States the ninety-first.

[L. S.] "ANDREW JOHNSON."

"By the President:

"WM. H. SEWARD,
Secretary of State."

Which warrant was duly delivered to this claimant and accepted by him, and the several conditions annexed have been complied with by the claimant. He brings into court and makes proffer herewith of the certificate of the Secretary of State, showing the receipt of the oath of allegiance taken in compliance with the requisitions of said pardon; and claimant avers that in all acts and facts to be performed or omitted according to the command and conditions of said pardon, he has fully executed and performed the same, and the said pardon is now in full force and effect, unrecalled and not forfeited by any breach of the conditions thereof.

Wherefore he pleads and relies on the same to prevent any further proceeding in this case to the condemnation of the said property of claimant which has been seized, and he says the same should be restored to him, of which he asks the judgment of this honorable court.

(Signed) JOHN ARMSTRONG.
H. MARSHALL,
For Appellant.

Agreed facts to be considered as proved in the case.

1. Claimant has complied with all the conditions of the pardon granted by President Andrew Johnson.

2d. That claimant took the oath of allegiance prescribed by President Lincoln's proclamation of 8 Dec., 1863, and filed the evidence thereof, and claimed the benefit of pardon under said proclamation.

3d. That claimant was a naturalized citizen of the United States, and a citizen of the State of Louisiana, domiciled in the city of New Orleans, for many years prior to the secession of Louisiana.

4th. That Louisiana passed an order of secession from the United States prior to the passage of the act 1861, 6th Aug., and adhered to what was called the government of the Confederate States of America, which was then, and for several months before, had been attempting to assert an existence free from the control of the United States; and that Mansfield Lovell, with the rank of a Major Gen'l in the service of the said so-called government of the Confederate States, held New Orleans in military occupation, with a body of confederate troops under his command, prior to the passage of the act of August, 1861, and continued to till the capture of New Orleans in April, 1862.

Jan. 28, '68.

HENRY STANBERY,
Att'y Gen'l.

H. MARSHALL,
For Claim't.

Supreme Court of the United States.

No. 74.

ARMSTRONG'S FOUNDRY.

JOHN ARMSTRONG, *Claimant*, APPELLANT,
vs.
UNITED STATES, *Libellant*, APPELLEE.

Appeal from the U. S. Circuit Court for the Eastern District of Louisiana.

BRIEF FOR APPELLANT.

This case commenced with a Libel of Information filed *in the Circuit Court* for the Eastern District of Louisiana, by the District Attorney of the United States, alleging a seizure of certain lots in New Orleans, and the tenements thereon, and of a quantity of personal property, of which this libel presents an inventory, with prayer that it may be condemned as forfeited to the United States for violation of the act 6th August, 1861, entitled "an act to confiscate property used for insurrectionary purposes." 12 Stat. at Large, 319.

The usual warrant of arrest, monition, publication, &c., follow, and John Armstrong, the owner, claimed the property and excepted to the jurisdiction of the court. His exception was overruled. He demurred to the libel and that was overruled. He offered plea of pardon which the court rejected, and finally he offered an answer, which the court, after submission, allowed to be filed, *nunc pro tunc*. Claimant appealed from the judgment, and superseded it by the execution of bond, which was accepted; so that the case is before this court on appeal.

The Attorney General seems to consider the act of 6th August, 1861, by its provision that property offending by use

or employment in aid of insurrection or resistance to the execution of the laws of the United States shall be "lawful subject of prize and capture," operates a forfeiture of such property from the commission of the offence, and that the language of the act is tantamount to a legal declaration of such forfeiture.

This position cannot be maintained. When the law declares that property in a certain predicament shall be *forfeited*, the language of the statute leaves no room for dispute as to the intention of the legislator; and the forfeiture by reason of the offence will be found to be stated on the statute book in every case. The adjudications by the courts in cases where forfeitures were declared for violations of the embargo; for violations of the slave trade act; for violations of the laws of impost, navigation or trade, cite the sections declaring that the offence, *proprio vi* operates the forfeiture. Such is not the fact with the act of 6th August, 1861; it merely declares that property used or employed with consent of the owner for certain purposes shall be "lawful subject of prize and capture." These are terms of technical import, and relate to capture made *jure belli*. The act does not declare the offence to operate the forfeiture, and *unless captured by force of arms, no property is confiscable under this act.* The Nassau, 4 Wall., 641.

In a case of forfeiture, the title passes from the offence; in case of capture, the title does not pass even by the capture; but the prize must be sent in for a judicial inquiry into the legality of the capture. The claim of "prize and capture" establishes the jurisdiction, and the subsequent proceedings in the prize court are upon the proof *in preparatorio*, unless an order for farther proof is made. Questions of prize or no prize cannot be tried in a common law court.

6 Taunt, 439.
2 Marsh, 123.
4 Campb., 357.
1 Knapp's Rep., 360.

It is important to construe this act correctly, for it im-

p rts upon its face to be a permanent law. In this extended country, occasions may hereafter arise for the application of its sanctions. Congress intended to indicate a time and an official act which should authorize hostilities against insurgents and their property used to aid in resistance to the laws of the United States—that the proclamation by the President should establish the insurgent in the status of public enemy, and authorize his private fellow-citizens to capture his property *by force of arms.* The signification of the word capture in the English language is "to take by force of arms," *not by an information filed with a District Attorney by an informer.* Such information must succeed the capture, and will justify proceedings for condemnation of the prize; it never was designed that the information should lead to a seizure, to be called *capture.* Such a construction perverts the law. The capture by the private citizen even in public war, without authority from his Government, is unauthorized, and may subject the party making it to heavy penalties, unless it be made in self defence. The privateer can only appear on the Ocean to capture under a commission, and is liable without one to be treated as a pirate. It was the design of the act of August, 1861, to indicate, for that time and all future times, that when the President should announce a resistance to the laws by a combination too powerful to be suppressed by the marshal and his posse, and it became necessary to use military force for its suppression, the insurgent should incur the penalty of having his property liable as prize to the captor of it wherever found. And this will render hostility from private sources legitimate, when it would not otherwise be under the public law. The bearer of despatches might have his horse captured—the oxen hauling provisions to support an insurgent force might be taken—the meat, provisions, cotton, clothing, supplies of any and every kind found by land or sea in this predicament would be "lawful subject of prize and capture," under this authority of Congress.

It is a law to legalize hostilities where they would otherwise be illegal, and it was designed by Congress to assist in

perfecting the enginery of war, whenever the occasion should arise to call for its exercise. But the manner in which this law is to be applied results from its very terms—prize and capture. The property against which it is employed must be guilty of *hostility*.

In this view also, it is respectfully submitted, the property must be captured *in delicto*, just as the vessel that runs a blockade. The end of the voyage in which the delictum occurs, is considered the limitation upon her liability for that fault. So, there should be under this act, in making a capture as prize; for surely it was not the idea of Congress that there should be no limitation upon the informer, and that the fault once attached to the property should subject it to capture as prize, in whosoever hands it might fall and at any time; yet such will be the case unless a limitation is applied as to other captures *jure belli*.

Under the public law, the title to a capture on land of movables, called booty, was fixed by twenty-four hours firm possession by the captor. I suppose no modern publicist notes a case of capture *of land, held under private title*, and authorities are hard to find sanctioning it.

Congress cannot declare *war* upon a State of the Union or upon the citizens thereof; but Congress can exact that the resistance of a State or its citizens to the laws, shall authorize hostilities and place both the State and citizen in the status of public enemies, from which relacions arise that carry all the indicia of war, and may, in the catastrophe, entail on the vanquished all its calamities.

This construction of the act brings it into consistency with the general principles of the public law, so that we can understand the scope of its operation.

The property subjected under this act may be found at sea and captured as a prize—the same, should it be captured on land. But, suppose a party in Arkansas to send his cotton, or a party in Kentucky to ship his tobacco, or corn or whiskey, to the New Orleans market to raise money to aid an insurrectionary movement, and that it arrives and is sold to an innocent purchaser, and the proceeds actually

applied by the owner as originally designed, would it not be unreasonable to construe this law to the effect that the employment of it by the owner for the illicit purpose, should condemn the property when caught by a cruiser on the high seas, on its way to a distant market, on the ground that the offence was perfected and the forfeiture was complete without capture, and that the taint was ineradicable?

The "property" mentioned in the act of 6th of August, 1861, should not be construed as embracing *real estate held by private title*; because such is not forfeited under the usages of nations in public wars. Congress should not lightly be supposed to have adopted, for the pending civil war and *for all future insurrections*, a rule denounced by all publicists, and discarded by all nations, in their relations even to enemies in public war, as unwarranted by modern civilization. Halleck, 456; Wheat., ch. 399; 7 Pet. 86.

It is not denied that instances may be quoted from history where conquest has subjected alike the public domain and the private landed property; but modern times have presented no such example, nor would it be credited that the American Congress designed to adopt as a permanent rule one which modern governments universally repudiate as barbarous.

While the insurgent remains bound by his citizenship his land cannot be so taken without violation of the 5th amendment to the Constitution as depriving a citizen of his property, without due process of law, and authorizing the capture of his property without compensation.

There were a number of acts and proclamations about the time this act in question was passed, and they were in *pari materia*, but they do not refer to real estate as in the list of "property" liable to prize and capture. See especially President Lincoln's proclamation of 16th August, 1861, which enumerates the property that may be seized and confiscated. See also act 3d March, 1863.

The 4th section of the act proposes the *forfeiture* of slaves employed on the military or naval works of the enemy

and that if not captured, the fact of such employment shall be afterwards a good bar to demand for service by the master. This class of persons is the *property* alluded to in the preceding section under the general description upon which I have been commenting. Congress intended they might be captured as prize if employed by their owner or with his consent in aiding or abetting or promoting resistance to the laws, but, as yet, chose to refer to them "*darkly*" and under a very general description.

To have said in the body of the law a captured slave should be sold by judgment of the court, and the proceeds of such sale divided between the Government and the captor was expressing no more than would be legally understood by the term "property of whatsoever kind," but it might have produced sinister political effects, which were avoided by the expression adopted.

It was not inended to enlarge the rule so as to include real estate and to pass the title to a tract of land by capture and holding for twenty-four hours, or any other named time.

The circuit court should have dismissed the libel as to the realty and fixtures attached thereto, whatever might have been done with the personalty which was alleged to be lawful subject of prize and capture.

The libel was filed in November, 1863, for violations of the statute alleged to have occurred in 1861 and 1862, when the Confederate forces were in military occupation of New Orleans.

There was no liability incurred under the act of 6th August, 1861, by the property, real or personal, for its use and employment at New Orleans in the service of the Confederacy, while the Confederate arms held possession of the city. It is not pretended that any use or employment of it in aiding the insurrection was made at any other time.

The proclamation of blockade, (19 April, 1861,) the act of Congress, (13 July, 1861,) authorizing the President to interdict trade and intercourse between the people of the loyal States and those of the insurrectionary States--the enact-

ment of forfeiture, after fifteen days, of all property of the people of the insurrectionary States, found in the ports, &c., of the loyal States or on the high seas, *as enemy property*, the proclamation of 16th August, 1861, under the law, made the legal case of flagrant war—civil war—according to the declarations of this Government, *and suspended the operation of the laws of the United States within the places then in the military occupation of the enemy.* This court has cited these laws and proclamations to prove the Government at that date *recognized civil war as existing.*—Case of Bagely, 5 Wall., 407. This court has decided that the whole of the people in the insurrectionary districts in the control of the enemy, whether loyal to the flag of the United States or not, became, by the act of the State and the fact of the insurrection existing, public enemies for the time, so that their property might be captured as enemy property. Mrs. Alexander's cotton, 2 Wall., 402.

The owner's allegiance was suspended by this condition of affairs, and he was bound to deport himself, and to manage his property in obedience to the commands of the government *de facto*. "The absence of peace suspends the laws of peace, and the presence of war substitutes military rule." * * "The place occupied by the enemy is regarded as *hostile territory*, * * no longer regarded as ours, * * for it would be absurd to suppose that persons who are under hostile authority are to exercise the same civil rights as citizens in time of peace." Halleck's International Law, 371; Wheat. Elements Nat. Law, 333. See Note; Vattel, ch. 18, Book 3, p. 425.

Claimant had resided in New Orleans for thirty years, engaged, assiduously and laboriously, in attention to the improvement of his fortune. He had acquired the property now libelled. He held no political position; swayed no political influence. Louisiana seceded and joined the Southern Confederacy. The act of the State Mr. Armstrong had no control over. His property consisted of real estate, and the tools and appliances in this foundry in New Orleans, and

he could not be expected to sacrifice it. The events following the collision at Sumter to the recognition of civil war, are embraced in a very brief space of time. Claimant found the precincts of his home bristling with Confederate bayonets, and himself as well as his property under the command of the officers of a *de facto* government, intent upon using all the means at their command to put the city of New Orleans in a state of defence.

Proof in this case shows the military and naval officers demanded that shot and shell should be cast at Armstrong's Foundry, for accommodation of the Confederate Government, or *they would take the property into their own possession, and work there on their own account.* They *commanded* that the work should be done, and Armstrong obeyed *only under compulsion.* Had he a desire to do so? Was his action voluntary? The proof is clear that *it was not*—that he had given direction to his employees not to work on public account. See Mr. Oliver's deposition, in cross-examination, page 39 of Record, "that he did not think Confederate Government work would last long, and he did not wish to have anything to do with it."

"The first work done for the Confederate Government was in August, 1861, *and upon compulsion.*" "I know it was from compulsion, from his having been notified by *officers in charge of the Confederate Government in this city.*" Page 40. I allude to this proof to ask whether this citizen, loyal, but in the grasp of an enemy—with the use and employment of his property for military preparation, *demanded* by the Confederate Government through its officers in charge of the place, was required at the same time by the laws of his own Government to refuse, and so sacrifice his estate and probably endanger his own life, when that Government could neither enforce law at the time and place, nor give to him any degree of protection? If not, then there is no violation of the statute.

See United States *vs.* Rice, 4 Wheat., 246.
United States *vs.* Hayward, 2 Gall., 436.

Suppose a regiment of cavalry camps upon my plantation and the commanding officer demands 1,000 bushels of corn

for which he volunteers to pay me a just and fair price if I will furnish it, and, in addition, proffers to keep his people from running their stock over my farm if I will deliver the corn in his camp by my own servants, wagons and horses; have I no legal right under such circumstances to save the value of the corn by accepting the price, and of saving my property from spoliation, and keeping it under my own control by using and employing my wagons, servants and stock as proposed? I consent, but at the same time I am under the duress of the overpowering force, and my intent is *not to aid the insurrection*, but to make such terms as shall prevent the needless sacrifice of my property. Shall this law be so construed that an informer and a district attorney may, through a court of the United States, seize and forfeit my farm and all I possess upon it for my consent to that transaction? Yet just that is proposed in this case.

By his *domicil* claimant's property was liable as enemy's property to capture. Was it under obligation at the same time to obey the laws of the other belligerent? If so, then the law is an incomprehensible enigma.

The law of 6th August, 1861, was succeeded on 16th August by the proclamation interdicting communication. There was no time to learn its provisions by a person shut up in New Orleans by the power of the enemy. Hostile character was already impressed on the claimant by the acts of both governments, and there could be no legal responsibility on the part of this property under the circumstances.

There was then no capture entitled to consideration in this case, and the libel should have been dismissed, and the property restored.

The city of New Orleans was formally subjected to the authority of the United States forces, and the occupation of it began on the 27th April, 1862. The claimant had full opportunity, had he desired, to quit his residence in New Orleans then, but he remained under the terms announced in the proclamation of the commanding officer. He was, by this choice, remitted to his proper allegiance to the United States, and was entitled to his property, had it been legally liable for

past offence. See the case of the Venice, 2 Wall., 229. The military occupation by the enemy, and allegiance temporarily suspended, or allegiance of preferred domicil, but subsequent change, relieved *the property* from *future liability to capture* for past offences, which derive the taint only from the action of the owner. To attempt, in November, 1863, to seize that property under the act of 6th August, 1861, for its use and employment *before New Orleans was occupied by the Federal forces*, when Mr. Armstrong had been peaceably employing the Foundry in lawful business for nearly eighteen months under the protection of the flag of the United States, seems to be the most *tortious capture* that has even been made or conceived of, and the condemnation of *the land under the admiralty process in the case*, would open a new chapter in public jurisprudence, quite astonishing to all publicists who have written of the laws of captures or of war.

The opinions rendered by this court in 2d Wallace, 404, and in 4th Wallace, in Hine *vs.* Trevor, would seem conclusive as to the point of jurisdiction.

The proceeding is *in rem:* the property offended only by the *action* and *consent* of the owner. The terms of the proclamation by the President, December, 1863, the claimant took advantage of. These extend amnesty and pardon for any offence committed by the person on his taking the oath. Can it be that when the owner is "pardoned," his property remains subject to punishment for that which is directly forgiven, and for which amnesty is extended to him.

Will he be punished by deprivation of property for an act of which "the guilt is washed away?"

Ex. Parte Garland, 4th Wall., 380.

No right of property has yet vested in the informer. Nor does it vest until sale and distribution.

United States *vs.* Morris, 10 Wh., 296.
5 Rob., 173.
11 East., 619.

The judgment of forfeiture has not occurred, nor is the question *res adjudicata*.

Yeaton *vs.* United States, 5 Cr., 281.
Josepha Secunda, 3 Pet., 88.

As to effect of pardon, see:

Salkeld, 689.
4th vol. Attorney General's Opinion, 574.
Vol. 5th, ib., 588.
Vol. 6th, ib., 405.
4 Wash. C. C. R., 66.
Bac. Abridg.—Tit. Pardon, 415.
4 State Trials, 681.
5 Ib., 171.

Prior to conviction shall prevent all forfeiture of lands or goods.

2 T. R. 569.
3 Mod. 101.
Lev. 120.

And pardon may be pleaded in arrest of judgment, or even to stay execution.

4 Blackstone, p. 376.
See also Comyn's Dig. Title Pardon H.

The libel is drawn in this case with the view of presenting every possible violation of the statute of which it is susceptible, yet it is subject to the following criticism:

1. The proclamation referred to in the act was never made. That of 16th August, interdicting commerce, &c., is not the proclamation alluded to in the act of 6th August.

2. The articles do not propound any violation of the statute, though intended to pursue the statute; for they do not allege that the projectiles of war were manufactured in this Foundry. The special mention of the property offending, and how it has offended, must be set forth with reasonable certainty to sustain judgment of condemnation.

3. If the act of the owner is to establish the guilt of the property, and he is loyal, the property could not be confiscated without producing proof of his conviction.

The Amy Warwick—Judge Sprague's Decision.

The proof is insufficient to sustain the condemnation. Neither of the two witnesses for the libellant had positive knowledge of any act that brings the property within the statute. The witness for claimant proves that whatever was done, was done under a *vis major*, and against the will of the claimant. The property is all seized as "capture or prize," but no proof that *any of it* was used in casting shot or shell. How would a desk or a barometer be employed for such a purpose? Is it sufficient to make such a charge to justify a seizure of all the personal effects of the party? Can it be sufficient to authorize confiscation and condemnation of all the engines, machinery, and "household furniture" found in his possession? Such is this case, as will be perceived by the inventory.

Much of the irregularity and rapacity, evident from the papers in this case, may be attributed to the times in which the proceeding originated; and they have, curiously enough, fallen on a claimant who—an Irishman by birth, and a mechanic by occupation—had as little to do with the politics of the country as any man in its borders. It is hoped this court will give him the benefit of a calm judgment, according to the law and facts of his case, exemplifying the great maxim of the public law that it is the soundest policy to pursue that line of conduct which is "most consonant to justice and most salutary to the State."

HUMPHREY MARSHALL,
for Claimant.

In the Supreme Court of the United States.

DECEMBER TERM, 1867.

ARMSTRONG'S FOUNDRY
vs.
UNITED STATES.
No. 74.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

STATEMENT OF THE CASE.

1. This was a libel of information, on behalf of the United States and William W. Lamberton, informer, against the buildings, ground, appliances, &c., known as Armstrong's Foundry, in the city of New Orleans, under the act of August 6, 1861, "to confiscate property used for insurrectionary purposes."

The proceedings had upon this information appear to have been conducted with most uncommendable conformity to that very peculiar system of procedure and practice which seems to prevail, in this class of cases, in the federal court at New Orleans; so that this court has before it, in this record, a mass of most informal proceedings, that must be intelligible only to one versed in the mongrel methods of procedure by which the four cases before the court, under the act of August 6, 1861, on appeal from New Orleans, were conducted to their conclusion.

In the first place, an *intervention* of the Citizens' Bank of Louisiana was filed, asserting a mortgage interest in the property proceeded against. (Rec., p. 8.)

Next, John Armstrong filed a *claim* to the property as owner. (Rec., p. 25.) On the same day Armstrong filed *exceptions* to the jurisdiction of the court, and prayed that the libel be dismissed. (Rec., p. 25.)

The next proceeding was an *answer* of the United States District Attorney, articulately responding to the intervention of the Citizens' Bank of Louisiana, which contains, in addition, the ordinary phraseology of a *demurrer*. (Rec., p. 27.)

On the same day the district attorney filed *exceptions* (four in number) to the intervention of the Citizens' Bank. (Rec., p. 28.)

Next was an intervention of the State of Louisiana, filed by the attorney general of the State.

Afterwards John Armstrong, claimant, filed a *demurrer*, on the grounds—1st. That the act of August 6, 1861, is in violation of the Constitution; 2d. That the information set forth no lawful grounds of condemnation. (Rec., p. 36.)

Subsequently Armstrong filed a *plea of pardon*, based on the amnesty proclamation of December 8th, 1863. (Rec., p. 37.)

To this plea the district attorney *demurred*. (Rec., p. 40.)

The exception of Armstrong to the jurisdiction and his *demurrer* were, it appears, overruled. (Rec., pp. 35, 36.)

The claimant, Armstrong, thereupon withdrew his plea of pardon, (Rec., p. 41,) but we find it again mentioned in a *bill of exceptions*, which is also in this record, as having been presented to the court on the

trial of the cause, "but the court refused to receive the same, to which ruling of the court the said Armstrong excepted." (Rec., p. 48.)

Scattered through the record are various depositions and *ex parte* affidavits on behalf of the United States and of the claimant.

Finally the court rendered a judgment, and "for reasons orally assigned by the court" rejected the defendant's plea of pardon, and condemned the property. It also "recognized the claim of the Citizens' Bank" in a special order or decree, the terms of which are not important here. (Rec., pp. 45, 46.)

This judgment was entered May 31, 1865, and on the 12th of June, 1865, John Armstrong was given leave to file "*nunc pro tunc* as of date 23d May, 1865," an answer to the libel of information traversing the allegations therein. (Rec., p. 49.) This was nearly a month after the entry of the final decree. On June 13th an appeal was allowed the claimant to this court.

2. The claimant and appellant having moved for leave to plead in this court a special pardon granted to him by the President, after the taking of the present appeal, the court granted the motion, so that the question as to the legal effect of this pardon upon the judgment or decree brought here for review is now presented for the consideration of the court.

FIRST POINT.

The pardon granted by the President does not operate to remit or affect any forfeiture of property belonging to the claimant, which may have accrued or which may have been incurred under and by force of the statute of August 6, 1861.

1. While it may be admitted that the President,

under his constitutional powers to "grant reprieves and pardons for *offences* against the United States," may relieve or remit any fine, penalty, or forfeiture imposed or prescribed by law as a punishment, in whole or in part, for an *offence* against the United States, yet a forfeiture of property presented or imposed not as punishment, in whole or in part, for an offence committed by the owner, but in virtue of the unlawful *predicament* in which the property may be found, or on account of the *character* or *quality* which that predicament affixes to it, cannot be relieved or remitted by the President in the exercise of his pardoning power.

"A pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a *crime* he has committed." United States *vs.* Wilson, 7 Peters, 159.

"The power thus conferred is unlimited, with the exception stated. It extends to every *offence* known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency, or after conviction and judgment.

"A pardon reaches both the *punishment* prescribed for the *offence* and the guilt of the *offender*; and when the pardon is full, it releases the *punishment* and blots out of existence the guilt, so that in the eye of the law the *offender* is as innocent as if he had never committed the *offence*.

"The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the *offence* of treason committed by his participation in the rebellion. So far as that *offence* is concerned,

he is thus placed beyond the reach of *punishment* of any kind. But to exclude him, by reason of that *offence*, from continuing in the enjoyment of a previously acquired right is to enforce a punishment for that *offence*, notwithstanding the pardon."

Ex parte Garland, 4 Wallace, 380.

Thus, the declarations of this court upon the operation of a pardon granted by the President, while they hold in effect that it remits and discharges forfeitures of property consequent directly on the commission of the offence forgiven by the pardon, and resulting merely from the personal *status* of the owner as a criminal, yet they, by necessary implication, exclude the conclusion that where any particular property of a rebel or traitor has been made by him, or any one, the instrument and means of a special violation of the law, and such property has been thereby placed in a predicament which has subjected it to forfeiture, under the law, without regard to the personal guilt of the owner, as rebel or traitor, such property is relieved from the forfeiture which has thus accrued by a pardon of the owner for the offence of treason. The whole effect of the pardon is to purge away from the grantee his character as a traitor—to "make him, as it were, a new man, and give him a new credit and capacity"—and, in so far as rights of property were defeated or affected *only* by his previous character as a traitor, to restore those rights to him; but in respect of property forfeited in virtue of a confiscable quality, so to speak, impressed upon it by the unlawful predicament in which it may have been involved, and not by reason of the personal criminality of the grantee, the pardon does not operate to defeat such forfeiture or destroy the right of the

government to seize and confiscate. Whenever, therefore, property is tainted with a forfeiture which depends upon, and arises out of, its own *status*, and not the personal *status* of the owner, the pardon cannot avail him as a bar to a prosecution for such forfeiture.

2. The act of August 6, 1861, does not affect property, within its purview, with liability to condemnation as a punishment for any offence of the owners, but as a means of suppressing the insurrection, then flagrant, by depriving those engaged therein of property subject to their control and dedicated to their uses. The act subjects to seizure and confiscation property thus situated:

1st. Property purchased *with intent* to employ the same in aiding the rebellion. The intent may never be executed, and the purchaser may never commit any criminal act by the unlawful employment of the property, and yet the property thus purchased with such *intent* will be liable to condemnation.

2d. Property *sold* or *given* with intent to *suffer* the same to be used or employed as mentioned. Although the vendee or donee may never so use or employ it, yet, if the vendor sell or the donor give the property with the unlawful *intent*, the forfeiture is complete.

3d. Property *used* or *employed*, or *suffered* to be used or employed, in aiding the rebellion, is likewise subject to confiscation, not with the view of punishing the owner, but as a method of depriving those to whose purposes it is dedicated of the means by which those purposes may be accomplished. In respect to all property within one or other of the three distinct predicaments mentioned, it is said it shall be the "*lawful subject of prize and capture wherever found.*"

These words are extremely significant. They draw

the property in question within the category of *enemy property*, as described and defined by the law of nations. They show that Congress had in view, not the creation and enforcement of punishment for offences, but the establishment of a rule of *capture*, under its constitutional power to make rules concerning captures on land and water. Property confiscable in the prize court is, either actually or constructively, *enemies'* property; and though the enemy-owner may be a traitor, or the guilty predicament in which his property may be found involves him in personal criminality, the prize confiscation does not proceed upon any ground or theory of punishment, but as a means of diminishing the resources of those with whom he is identified. The property of every resident of the enemies' country, which may be the subject of maritime capture, is confiscable in the prize court; it is none the less confiscable, though the owner be most favorably disposed to the capturing government; it is not the more liable to condemnation, because it may be the property of one guilty of many acts of hostility and treason. If the property of a loyal citizen be found in the course of commercial intercourse with enemies, it will be liable to confiscation for illegal trading, not on account of any personal guilt of the owner—for he may be innocent of all offence in the eye of the municipal law—but on grounds of public policy, which deems it injurious that such trade, in time of war, should be carried on. The law does not inquire, in such a case, whether the intent of the owners was to give aid and comfort to the enemy, for it does not care whether the intention was innocent or guilty. It imputes no blame, in a legal or moral sense, to the owner, while it condemns his

property. If he intended to give aid and comfort, his trading may be an act of treason, for which he would be personally punishable.

If the trading occurred without any guilty intent, he would not be liable to criminal prosecution. But in either case his property involved in the illegal intercourse would be confiscable in the prize court. In cases in which the English prize courts condemned supplies shipped from, and actually owned in, Great Britain, for the purpose of relieving the distresses of British subjects in Granada, who were under the temporary subjection of the French during our revolutionary war, proceeded upon the ground that the supplies were constructively French, and, therefore, enemies' property. (1 Rob. 207.) The property was owned by people in Ireland, who were no doubt perfectly loyal to the British Crown. If it had been owned by starving and loyal Granadians, the same decree would have been pronounced. If the supplies had been munitions of war, intended to be used by the French in carrying on the hostilities with England, they would have been subjected to condemnation on the same ground, although the shippers would have been liable to be hung for treason.

This act of August 6, 1861, we contend, is a statute in furtherance of the policy of the law of war, and intended to cripple the resources of the insurgent enemies by subjecting property under their control, and devoted to their services, to seizure and confiscation. It operates not only upon the property of citizens who owe allegiance to our government, but also upon the property of the subjects of foreign governments who owe us no allegiance, and are, therefore, incapable of committing treason against the United States. All

property in any way disposed of in a manner to aid and abet the rebellion, and by whomsoever it may be so disposed of, is liable to seizure if found within our jurisdiction. If a British subject sell property to the insurgent with intent that it shall be used in aiding the rebellion, the property will be liable to condemnation when found within our jurisdiction. If a British subject suffer his property in our jurisdiction to be used in abetting the insurgents, it will be confiscable by virtue of this act, although the owner cannot be prosecuted for treason. The statute is general and universal in its application, and embraces all property in the predicament which it describes, irrespective of the personal *status* or relations of its owners.

3. This view may be reinforced by a comparison of the provisions of the act of August 6, 1861, with those of the confiscation act of July 17, 1862. It will be seen that the sixth section of the latter expressly subjects property to confiscation *on account* of the personal criminality of the owners, and clearly *for the purpose* of punishing such criminality. The words of the statute are, "that if any *person*, &c., being engaged in armed rebellion against the government of the United States, or aiding or abetting such rebellion, shall not, &c., cease to aid, countenance and abet such rebellion, and return to his allegiance, all the estate, and property, moneys, stocks and credits of such person shall be liable to seizure," &c. (12 Statutes, 591.)

Here it is plain that the legislature had in view the punishment of traitors, and that the forfeiture was intended to operate as a penalty consequent from and dependent upon specific acts of treason. It was in this view that Congress, in the 13th section of the

act, provided for *pardon* and amnesty to persons who may have participated in the rebellion; which pardon or amnesty was intended to operate for the relief of such persons from the forfeiture denounced against their property by this act, and this alone, as well as from the other penal consequences flowing from their participation in the rebellion. Every person whose property may be confiscable by the act of 1862 is guilty of treason, and his personal guilt is the very ground on which the confiscation proceeds. The guilt being removed by an act of executive clemency, the legal consequences fall with it. The party is reinstated in those rights of property from which he was debarred by disability arising out of the fact of his being a rebel and a traitor. To this extent the pardon operates upon his property, and here it terminates.

4. Lord Coke's definition of a pardon is inapplicable, in part, when we are considering the operation and effect of such an instrument issued by the President under his constitutional power to grant reprieves and pardons for offences against the United States. He defines a pardon to be "a writ of mercy whereby the King, either before attainder, sentence, or conviction, or after, forgiveth any crime, offence, punishment, execution, *right*, *title*, *debt* or *duty*, temporal or ecclesiastical." (3 Inst., 233.)

"If the King, after verdict upon an obligation and *non est factum* pleaded, pardons *all debts*, and judgment be afterwards entered; yet it shall be discharged by the pardon, and the defendant may plead it." (3 Inst., 235.)

In this country the President cannot grant, surren-

der or give away the pecuniary or proprietary rights of the United States. He cannot remit the bonds of public officers, nor cancel recognizances for appearance taken in the course of criminal prosecutions and for surety of the peace, except only by special statutory authority in the District of Columbia. (Act June 17, 1862, 2 Stats. 732.)

SECOND POINT.

Whatever may be the effect of the pardon, set up by the claimant in bar of condemnation in this case, upon the interest of the United States in this property, it cannot operate to remit the moiety which accrues to the informer on whose behalf, jointly with the United States, these proceedings were instituted.

The king cannot, by a pardon of an offence against a popular or penal statute whereby a part of the penalty is given to the informer, remit that part after information brought, on the ground that thereby the informer has acquired a private property in his part of the penalty. (3 Just., 238; 4 Blackstone's Comm., 309; 2 Hawk., pp. 6, 392; Comyn's Digest, Pardon, F.)

THIRD POINT.

We submit that this court will not review the decision of the court below upon the facts on which it passed in entering judgment of condemnation against this property.

1. This court has said, over and over again, that in an action at law it will not inquire whether the fact submitted to the decision of an inferior court was rightly decided or not according to the evidence, and that such decision is as conclusive as the verdict of a jury. (United States *vs.* King, 7 Howard, 841; Bond *vs.*

Brown, 12 Howard, 257; Burr *vs.* Des Moines, 1 Wallace, 103.)

2. This is a proceeding at law, and not a case of admiralty cognizance or equity jurisdiction.

Under a statute of municipal forfeiture, such as this, proceedings for the condemnation of property seized on land, without the admiralty and maritime jurisdiction of the United States, are, *ex necessitate rei*, according to the course of the common law. It has never been claimed that Congress had power to extend the admiralty jurisdiction to any case of property seized upon land as forfeitable under a statute of the United States. Grave doubts have been expressed by writers of the highest authority, whether Congress could constitutionally place seizures upon tide waters, in ports, harbors, creeks, and arms of the sea, within the class of cases of admiralty jurisdiction. Alluding to such cases, and the decisions of the Supreme Court in respect to them, Chancellor Kent says: "Congress had a right, in their discretion, to make all such seizures and forfeitures cognizable in the district courts; but it may be a question whether they had any right to declare them to be cases of admiralty jurisdiction, if they were not so by the law of the land when the Constitution was made. The Constitution secures to the citizen trial by jury, in all criminal prosecutions, and in all civil suits at common law, where the value in controversy exceeds twenty dollars. These prosecutions for forfeiture of large and valuable portions of property, under revenue and navigation laws, are highly penal in their consequences; and the government and its officers are always parties, and deeply concerned in the conviction and forfeiture.

And if, by bill of Congress or judicial decisions, the prosecution can be turned over to the admiralty side of the district court, as being neither a criminal prosecution nor a suit at common law, the trial of the cause is then transferred from a jury of the country to the breast of a single judge." 1 Kent's Comm., 376.

Mr. Conkling, in his able Treatise, makes similar observations upon the decisions in the cases of La Vengeance, 3 Dallas, 277; United States *vs.* Sally, 2 Cranch, 406; United States *vs.* Betsy, 4 Cranch, 443; The Samuel, 1 Wh., 9; The Octavia, *id.*, 20; The Sarah, 8 Wheaton, 291.

"The question must therefore," he says, "it is presumed, be regarded as definitively settled; though it would certainly have been more satisfactory had the course of judicial reasoning which originally led to its decision been stated with more of that fulness, perspicuity and precision by which the later decisions of the Supreme Court are in general so eminently distinguished." (Conkling's Treatise, p. 231.)

To extend, however, the admiralty jurisdiction to cases of seizures of *fast land*, or movable property on *land*, under a statute of municipal forfeiture, is an expansion of that jurisdiction which the most ardent civilians in Congress and in the judiciary have never believed possible under the Constitution of the United States.

Under the statute of August 6, 1861, as under every such law, if the seizure is on land the trial must be by jury; if on water, and within the admiralty jurisdiction, then on the admiralty side of the court. This statute gives a further jurisdiction to the circuit court, in cases of seizure on land, where the value of

the property is equal to the jurisdictional amount for that court. But the jurisdiction of that court must be exercised as in cases at law, and not according to the procedure of the admiralty.

FOURTH POINT.

The allegation of *duress* is not supported by the evidence. The only force that does excuse, in such a case, is a force upon the person, and present fears of death; and this fear and force must continue all the time the party remains with the rebels. It is incumbent on every man who makes force his defence to show an actual force, and that he quitted the service as soon as he could. (McGrowther's case, Fost. 14, 216; 1 East P. C., 70; 1 Hale P. C., 140; United States *vs.* Vigol, 2 Dallas, 347; 2 Greenleaf on Evidence, 249.)

FIFTH POINT.

The decree of the circuit court should be affirmed, if jurisdiction is taken of it on this appeal.

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pp. 39. 40.

7 Cranch p. 394

10 Wheaton U.S. v Morris

5 Op. 583 — Opinions of Atty Genl